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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M-61875-2023
Date of decision : 15.12.2023

Kashmir Singh

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ranbir Singh Sekhon, Advocate
for the petitioner.

Mr. Jaswinder Singh Arora, DAG, Punjab
with ASI Baghwan Singh.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.37 dated 01.05.2021, registered for the offences punishable under Sections 302 and 34 of IPC, 1860 at Police Station Khuhi Khera, District Fazilka.

2. Custody Certificate of the petitioner has been filed on behalf of the State today in Court, which is taken on record. As per the same, the petitioner has undergone actual custody of 02 years, 07 months and 11 days including remission.

3. Reliance is being placed upon order dated 05.10.2023 passed in **CRM-M-32175-2023**, whereby co-accused namely Seema Rani and Tejwinder Singh have been admitted to bail observing as under:-

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“1. This order of mine shall dispose of two petitions i.e., CRM-M-32175-2023 and CRM-M-42896-2023 filed by Seema Rani and Tejwinder Singh, respectively for grant of regular bail in FIR No.37 dated 01.05.2021 registered under Sections 302 and 34 of Indian Penal Code, 1860 at Police Station Khui Khera, District Fazilka.

2. Learned counsel(s) appearing on behalf of both the petitioner(s) have submitted that both the petitioners are in custody since 04.05.2021 (more than 2 years and 5 months) and there are 30 prosecution witnesses, out of which, only one witness has been examined and thus, the conclusion of trial is likely to take time. It is further submitted that both the petitioners have never been involved in any other criminal case and have been falsely implicated in the present case. It is contended that the petitioners were not named in the FIR which was registered on the statement of Paramjit Kaur wife of the deceased inasmuch as in the FIR, she has stated that her husband Malkit Singh had stated that he was going to Bakainwala in search of work and when he did not return till the next morning, thereafter, his family members started looking for him and learnt that he had been murdered by some unidentified persons. It is further contended that as per the FIR, the deceased had left the house on 30.04.2021 and FIR was registered on 01.05.2021 and the petitioners have been implicated subsequently on the basis of the supplementary statement recorded by the complainant-Paramjit Kaur on 04.05.2021 which is after a delay of three days from the date of registration of the FIR. It is further submitted that even as per the said

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statement, the complainant had come to know that Seema Rani, mother-in-law of her son Vikram Singh had a bad character and was going on a wrong path and the deceased (husband of the complainant) had disclosed the said fact to her. It was further stated by the complainant that said Seema Rani along with Tejwinder Singh and one Kashmir Singh had murdered her husband in connivance with each other and regarding the same, she had full confidence. It is submitted that even as per the said statement, it has not even remotely been stated as to how she found out that the petitioner(s) along with co-accused Kashmir Singh had murdered the deceased. It is argued that the allegations in the said supplementary statement to the effect that her deceased husband had disclosed to her that he used to stop Seema from doing illegal acts as the same would defame them in society, would show that as per the said statement, the said fact was known to the complainant prior to the death of her husband but the same was never mentioned in the FIR and in the FIR, it was stated that unidentified persons had committed the murder of the deceased. It is argued that the complainant-Paramjit Kaur has been examined as PW1 and in her examination-in-chief, she has stated that the petitioner-Seema Rani was taken into custody on 01.05.2021 whereas as per the case of the prosecution, the said Seema Rani has been shown to be arrested on 04.05.2021. It is further argued that although, it is the case of the prosecution that the said Seema Rani had an illicit relationship with the deceased but as per the evidence of PW1, the case sought to be built is that Seema Rani had an illicit

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relationship with other persons which was opposed by the deceased. It is also highlighted that in the cross-examination, it has been admitted by PW1-Paramjit Kaur that the name of accused Tejwinder Singh was disclosed to the complainant by the police and that the complainant had never seen the accused Tejwinder Singh prior to him being apprehended in the case and that the said Tejwinder Singh was seen by the complainant in the Police Station and that she had further admitted that daughter of Seema Rani namely, Paramjit Kaur is married to son of the complainant and specific suggestion had been put to the said complainant to the effect that Paramjit Kaur, daughter of Seema Rani had moved a complaint of dowry harassment against the complainant. It is argued that at any rate, the said Paramjit Kaur is not an eye-witness and in fact, there is no eye-witness in the present case and Seema Rani has been falsely implicated in the present case on account of a dispute between the daughter of Seema Rani and son of the complainant. It is submitted that Tejwinder Singh has also been falsely implicated being an acquaintance of Seema Rani. It is argued that there is no material on record to even remotely show that Seema Rani had an illicit relationship either with the deceased or with Tejwinder Singh or with any other person.

3. Learned counsel for the petitioners has submitted that previous bail applications of the petitioners were dismissed as withdrawn on 12.07.2022 at that stage with liberty to file regular bail applications after the complainant had been examined. It is submitted that now, the complainant

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has been examined and the petitioners have suffered substantial incarceration and are thus, entitled to the concession of regular bail. Learned counsel for the petitioner-Tejwinder Singh has further pointed out that the second bail application of the petitioner-Tejwinder Singh was dismissed as withdrawn on 02.08.2023 with liberty to file a fresh petition after annexing the report under Section 173 Cr.P.C. and other relevant documents and thus, in effect, the present bail application is the second bail application of the petitioner-Tejwinder Singh.

4. On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner(s) and has submitted that from Seema Rani, recovery of blood stained clothes has been effected and from Tejwinder Singh, recovery of iron kappa which had been used in the commission of the crime, has been effected. It is also submitted that the co-accused Kashmir Singh, in his disclosure statement, has admitted the fact that all three people including the present petitioner(s) had conspired to kill the deceased Malkit Singh. However, other facts have not been disputed by learned State Counsel.

5. Learned counsel for the petitioner(s) in rebuttal to the abovesaid arguments has submitted that with respect to the recovery of the blood stained clothes from the petitioner-Seema Rani and iron kappa from the petitioner-Tejwinder Singh, it is stated that there is no FSL report on record to show that the blood on the same belongs to the deceased. It is further submitted that the statement made by the co-accused Kashmir Singh while in police custody, admitting the case of the prosecution

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would not in any way, further the case of the prosecution as the said statement is not admissible in evidence.

6. This Court has heard learned counsel for the parties and has perused the paper book.

7. In the present case, both the petitioners have been in custody since 04.05.2021 (more than 2 years and 5 months) and out of 30 prosecution witnesses, only one witness has been examined till date and thus, the conclusion of trial is likely to take time. Both the petitioners are stated to not have been involved in any other criminal case and are not named in the FIR which was got registered on the statement of the complainant-Paramjit Kaur, who is the wife of the deceased. In the FIR, it has been stated by the said Paramjit Kaur that her husband had been killed by some unidentified persons. It is not in dispute that neither the said Paramjit Kaur was an eye-witness nor there is any eye-witness to the occurrence. Both the petitioners have been implicated on the basis of the supplementary statement recorded by the complainant on 04.05.2021, which is after a delay of three days from the date of registration of the FIR i.e., 01.05.2021. Even, a perusal of the said statement which forms part of GD No.027 (Annexure P-2 in CRM-M-42896-2023) would show that it has not been stated as to from where the complainant came to know that the petitioners were involved in the said crime. The allegations in the said supplementary statement made by the complainant to the effect that the deceased husband of the complainant had informed her that Seema Rani was doing wrong acts and that he tried restraining her

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from doing the said acts as the same would have defamed them in society, would show that the complainant was already aware of the said facts prior to the death of her husband and yet the said facts were not got recorded in the FIR dated 01.05.2021 by the complainant. Even as per the said statement, it is not the case of the said Paramjit Kaur that she had witnessed the petitioner(s) killing the deceased. The said Paramjit Kaur has already been examined as PW1 and as per her statement in examination-in-chief, she had stated that Seema Rani was taken into police custody on 01.05.2021 whereas according to the prosecution, Seema Rani was arrested on 04.05.2021. In her cross-examination, said PW1-Paramjit Kaur had stated that the police had disclosed the names of Tejwinder Singh and Kashmir Singh to her and that she had never seen Tejwinder Singh prior to him being apprehended in the present case and had seen him in Police Station Khui Khera. It has been admitted by the complainant that her son Vikram Singh is married to the younger daughter of Seema Rani i.e., Paramjit Kaur and suggestion had also been put to the complainant to the effect that Paramjit Kaur had moved a complaint of dowry harassment against the complainant and her son. The arguments raised by learned counsel for the petitioner(s) to the effect that the petitioner(s) have been implicated on account of there being a matrimonial dispute between the complainant's son and Seema Rani's daughter, cannot be outrightly rejected and the said facts along with other factors would be considered by the trial Court during the course of trial and this Court does not wish to give

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any affirmative opinion on the same, lest it may prejudice the case of either of the parties.

8. Keeping in view the abovesaid facts and circumstances, more so the custody of the petitioner(s), both the petitions are allowed and the petitioners are directed to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to them not being required in any other case.

9. However, it is made clear that in case, any act is done by the petitioners to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioners.

10. Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

11. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.”

4. Counsel fort the petitioner claims parity claiming that as per the supplementary statement recorded after 3 days of FIR, the complainant claimed that Seema Rani alongwith Tejwinder Singh and Kashir Singh i.e. the present petitioner murdered her husband in connivance with each other. Thus, the allegations qua the petitioner are not different from the one alleged against Seema Rani and Tejwinder Singh.

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5. State counsel is not in a position to dispute the aforesaid facts.
6. Keeping in view the parity and the incarceration already suffered by the petitioner, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.
7. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

15.12.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No