



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

263

CRA-S-470-2024

Date of decision: 25.07.2024

Gurwinder Singh @ Goda

.....Appellant

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. J.S. Bains, Advocate
for the appellant.

Mr. Shiva Khurmi, AAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The appellant is challenging order dated 02.11.2023 passed by learned Additional Sessions Judge, Amritsar, whereby his application for grant of regular bail under Section 439 of the Cr.P.C. in case FIR No.70 dated 29.06.2022 under Sections 302, 34 of the IPC and Section 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015) (for short, 'the SC/ST Act') registered at Police Station Kathu Nangal, Amritsar, District Amritsar, was dismissed.

2. Learned counsel for the appellant has filed copies of statements of the prosecution witnesses which are taken on record subject to all just exceptions.

3. Learned counsel for the appellant submits that the appellant has been in custody since 01.07.2022 in a case of false implication. As per allegations levelled in the FIR, the appellant



inflicted repeated brick blows on the head of Jobanpreet Singh (hereinafter referred to as 'deceased') along with 2/3 other unknown assailants. In support, learned counsel has drawn the attention of this Court to the FIR which has been annexed as Annexure A-1. It has been argued by the learned counsel that a perusal of the FIR reveals that it is based on an eye witness account, however, falsity of the prosecution version is evident from the fact that both the key witnesses including the complainant, who allegedly witnessed the deceased being inflicted fatal blows had been declared hostile during trial as they had not supported the case of the prosecution. It has been further submitted that since 18 prosecution witnesses still remain to be examined, further incarceration of the appellant, who has now been in custody for more than two years would serve no useful purpose coupled with the fact that there can be now no apprehension of the appellant tampering with evidence or even intimidating the witnesses.

4. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has not been able to controvert on instructions from ASI Rajinder Pal, that both the key witnesses including the complainant (alleged eye witness) did not support the case of the prosecution and were thus, declared hostile. It has also not been disputed that the appellant has no criminal antecedents. However, learned State counsel has drawn the attention of this Court to the allegations levelled in the FIR wherein it had been categorically alleged by the complainant who also happens to be the brother of the deceased that repeated brick blows had been inflicted



upon the deceased by the appellant which ultimately proved fatal for him. It has also been urged by the learned State counsel that initial version given in the FIR finds due corroboration with the medical evidence on record.

5. I have heard learned counsel for the parties and perused the material placed on record.

6. The case in hand is based on eye witness account. The complainant lodged the FIR in question wherein he alleged as under:-

“.....We are four sisters and brothers. The eldest is my sister Mandeep Kaur who is married and there are two younger brothers namely Jobanpreet Singh and my younger sister Jasbir Kaur and I am the youngest all of them. That on 28.06.2022 at about 8.30 p.m. at night my brother Joban Singh who was having meals in the house was called by Gurwinder Singh @ Goda son of Sumittar Singh, caste Jat, resident of Chachowali for playing cards and my brother Jobanpreet Singh did not return back to the house and I alongwith my mother Ninder Kaur went for in search of him and when we reached near motor of Kashmir Singh @Tara Singh, resident of Chachowali at about 12.30 in the night, we heard raula 'maar ditta maar ditta' and we ran towards motor and Gurwinder Singh @ Goda son of Sumittar Singh, caste Jat, resident of Chachowali was giving brick blows on the head of Jobanpreet Singh and I saw it with my own eyes and there was 2/3 other unknown persons who had covered their face and on account of darkness. I could not identify them and they ran away from the spot and I saw on reaching there that my brother had died on the spot and on account of darkness we could not go for informing. The reason behind this was enmity about a year back as they quarreled with each other on a minor issue, on account of that enmity Gurwinder Singh has killed my brother alongwith 2/3 persons and I am reporting this matter to you after meeting you and, as such, legal action be taken against Gurwinder Singh @ Goda.....”

7. Concededly, the complainant has been declared hostile during trial and there is no other eye witness to the occurrence in

question. Hence, in the circumstances, further incarceration of the appellant would serve no useful purpose, moreso, when he has no criminal antecedents. In the facts and circumstances as enumerated hereinabove, this Court deems it fit to extend the concession of bail to the appellant.

8. Accordingly, the instant appeal is allowed and the impugned order dated 02.11.2023 is set aside. The appellant be admitted to bail on his furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

9. Needless to add, in case the appellant misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

25.07.2024

(MANJARI NEHRU KAUL)
JUDGE

Vinay

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No