



208.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8566-2023

Date of decision: 17.09.2024

1.

Harjit Singh alias Rahul

.... Petitioner

Versus

State of Punjab

.... Respondent

2.

CRM-M-41576-2022

Lakhbir Kaur

.... Petitioner

Versus

State of Punjab

.... Respondent

3.

CRR-2186-2022

Rajbir Singh @ Babbu

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Yajur Sharma, Advocate, for the petitioner(s) in
CRM-M-41576-2022 and CRM-M-8566-2023.

Mr. Anush Samson, Advocate for
Mr. Vinay Kumar, Advocate, for the petitioner in
CRR-2186-2022.

Ms. Manjot Kaur, AAG, Punjab.

GURBIR SINGH, J.

1. By this common judgment, the abovementioned three petitions are being disposed of as they arise out of same FIR.

1.1 These petitions have been filed under Section 439 of Cr.P.C for grant of regular bail to the petitioners in case FIR No.177, dated 14.05.2022, registered under Sections 302, 148, 149, 120-B of IPC (Sections 201, 342 of IPC added lateron) at Police Station Islamabad, District Amritsar.

1.2 The allegations against the petitioners are that they caused death of one Preet.

2. As per prosecution version, on 14.05.2022, SI Sulakhan Singh along with other police officials, while on patrolling and in search of bad elements, received a secret information that one boy, namely, Preet, who is a tenant in the house of Sukhjinder Singh and was in live-in relationship with Rajji alias Muskan (daughter of Lakhbir Kaur), at about 12:30 AM came to the house of Lakhbir Kaur where Rajji alias Muskan was residing, and when Preet started compelling Rajji alias Muskan to perform marriage with him, Lakhbir Kaur, Rajji alias Muskan, Gautam Kumar (maternal brother of Rajji alias Muskan), Rahul and Babbu in furtherance of their common intention, gave beatings to Preet with iron rods, hands of spade etc. Upon receipt of said information, SI Sulakhan Singh along with other police officials reached at the spot where Preet was lying unconscious having various injury marks on his body. He was taken to Civil Hospital, Amritsar, where he was declared dead by the doctor.

2.1 Lakhbir Kaur and her daughter Rajji @ Muskan were arrested on 16.05.2022. During custodial interrogation, they suffered disclosure statement before the Investigating Officer that the deceased used to tease Rajji @ Muskan. They called Gautam Kumar, who further called Rahul and Baboo. Lakhbir Kaur and her daughter called Preet on 14.05.2022 at 12:15 AM to come their house. Preet came at 12:30 AM. They tied his arms and gave beatings with ladle (*karchhi*), while Rahul, Gautam and Baboo, gave beatings with iron pipe and handle of spade. Jashan son of Rajji @ Muskan made video on mobile phone at the time of giving beatings to Preet which was sent to his father and other persons. Mobile phone used for making the video was recovered from the house of Lakhbir Kaur.

2.2 As per postmortem report, 9 injuries were found on the dead body of the deceased and all injuries were antemortem in nature.

2.3 During investigation, co-accused Harjit Singh @ Rahul, Rajbir Singh @ Baboo and Gautam Kumar were also arrested on 18.05.2022. They disclosed that Lakhbir Kaur and Rajji @ Muskan called the co-accused Gautam Kumar, who further made a phone call to Karan and asked him to send co-accused Harjit Singh @ Rahul and Rajbir Singh @ Baboo to the house of Lakhbir Kaur. They all kept on beating Preet till he became unconscious. Thereafter, co-accused Harjit Singh @ Rahul took out mobile phone of the deceased. Harjit Singh @ Rahul, Rajbir Singh @ Baboo and Gautam Kumar buried their respective weapons and mobile phone of the deceased in the fields opposite Murasi Mohalla. Said mobile

phone of deceased, one blood stained iron pipe and two blood stained handles of spade, used in the crime, were recovered from the place as disclosed by the said accused. Further, on the basis of their disclosure statement, Karanjit Singh was also nominated as co-accused and arrested on 20.05.2022 and on his disclosure, blood stained handle of spade was recovered but the mobile phone, which was used by co-accused Gautam Kumar for making call to him, was not recovered from Karanjit Singh as the same was destroyed by him.

2.4. During investigation, statement of witness Galib Hussain son of Gulab Rubani, resident of Gali No.14, Guru Nanakpura, Kot Khalsa, Amritsar was recorded under Section 161 Cr.P.C. who stated that on the day of occurrence, at about 12:30 AM, he was going to his house, then he saw one boy entering the house of Lakhbir Kaur and four other boys were also going after him at a distance of 10 to 12 meters. He states that though he heard shouting from the house of Lakhbir Kaur but he did not heed much. Thereafter, next day, he came to know Rajji @ Muskan was having illicit relations with Preet, who used to harass them and therefore, Lakhbir Kaur, Rajji @ Muskan along with Gautam and his friends gave beatings to said Preet, due to which, he died. The photographs and video of beating were shown to said Galib Hussain, who identified the accused persons. Statement of another witness Gurjeet Kaur Komal wife of Mukhtiar Singh Mithu, resident of Akash Avenue, Bohri Sahib Road, Kot Khalsa, Amritsar-District Senior Vice President of Shiromani Akali Dal, was also recorded,

who stated that Karanjit Singh had made extra judicial confession before her with regard to having committed the crime along with other co-accused and had requested her to produce him before the police. She asked him to come on the next day, but he did not come.

3. Learned counsel appearing on behalf of the petitioners-Lakhbir Kaur in CRM-M-41576-2022 and Harjit Singh alias Rahul in CRM-M-8566-2023 submits that there is no evidence to show that the deceased-Preet and Rajji @ Muskan (daughter of the petitioner-Lakhbir Kaur) were in relationship. Her daughter was married and was living with her husband Ninder Singh. As per disclosure statements of Lakhbir Kaur recorded by the police on 16 & 18.05.2022, Lakhbir Kaur used *karchi* for beating the deceased whereas no such alleged weapon used by Lakhbir Kaur and her daughter was recovered by the police. Confessional statement made before the police is inadmissible evidence. Reliance is placed on ***Indra Dalal Versus State of Haryana, (2015) 11 SCC 31***. Petitioner-Lakhbir Kaur is in custody since 16.05.2022 whereas petitioner-Harjit Singh alias Rahul is in custody since 18.05.2022.

3.1 Learned counsel appearing on behalf of the petitioner-Rajbir Singh @ Babbu in CRR-2186-2022 submits that the petitioner was juvenile at the time of alleged crime. Petitioner is in special home since 16.05.2022 and he can be best rehabilitated by obligating his parents to take care of him and not by any institutionalized custody. He earlier approached for bail before the Principal Magistrate, Juvenile Justice Board, Amritsar, but vide

order dated 27.07.2022, it was dismissed. His appeal was also dismissed vide order dated 03.10.2022 by the learned Additional Sessions Judge, Amritsar. It is further submitted that the statutory provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 have been not been taken consideration.

3.2 Learned counsel for the petitioners further submits that challan in this case has already been presented. Some of the witnesses have turned hostile. Conclusion of trial will take long time. No useful purpose would be served by further incarceration of the petitioners.

4. Learned State counsel has opposed the bail to the petitioners considering the allegation of commission of heinous offence of murder. She submits that from the video and photographs, the accused can be seen giving beating to Preet (since deceased). Charges in the case have been framed. She further submits that since some of the witnesses, namely, Gurjit Kaur @ Komal, Gurpal Singh and Sukhwinder Singh have turned hostile, is not a ground to grant bail to the petitioners. There is sufficient incriminating evidence in the shape of reports of Forensic Science Laboratory, Digital Forensic Laboratory, Border Range, Amritsar and postmortem report which establish that the accused persons gave beating to the deceased with their respective weapons and caused injuries, which resulted into the death of Preet.

5. I have heard the submissions of learned counsel for the petitioners, learned State counsel and have gone through the file.

6. The case, in question, was registered on the basis of secret information. Gurjit Kaur @ Komal before whom Karanjit Singh @ Karan made confessional statement was examined as PW1. She did not support the prosecution version and turned hostile. Gurpal Singh was examined as PW2 and Sukhjinder Singh as PW3. They were witness to prove the relationship of Preet (since deceased) with Rajji @ Muskan, but they also did not support the prosecution version and were declared hostile. Galib Hussain, PW4, who made the statement before the police that he saw the accused entering in the house of Lakhbir Kaur and identified Lakhbir Kaur and Rajji in the video, also did not support the version of prosecution and was declared hostile.

6.1 Petitioner Lakhbir Kaur is in custody since 16.05.2022 and the other petitioners Harjit Singh alias Rahul and Rajbir Singh @ Babbu are in custody since 18.05.2022. They are in judicial custody for the last more than 2 years and 3 months; completion of trial will take time; their culpability would be decided during trial of the case.

6.2 Petitioner Rajbir Singh @ Babbu has been declared as juvenile by the Juvenile Justice Board as he was found to be of 16 years, 4 months and 15 days old at the time of occurrence. It is well settled that the bail of a child in conflict with law cannot be rejected in a routine manner. A juvenile has to be released on bail mandatorily unless and until the exceptions carved out in proviso to Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter called, "J.J. Act") are made

out. The burden is on the prosecution to bring the case within one of the exceptions under the provisions of Section 12(1) of the J.J. Act. As per Social Investigation Report, he was under the peer group influence due to friendship circle. His brother is a domestic help and his mother is a domestic help and his father is doing nothing due to his ill health. Nothing was brought on the file that juvenile was associated with known criminal or gang of criminals or likely to associate with them if released on bail. In these circumstances, refusing bail to a juvenile is injustice against the established principles that ordinarily, a juvenile is to be released on bail. Accordingly, the order dated 27.07.2022 passed by the Juvenile Justice Board, Amritsar as well as order dated 03.10.2022 passed in appeal are hereby set aside and the revision petition is hereby allowed.

7. Considering the fact that the petitioners are in custody for the last 2 years and 3 months; culpability of the petitioners would be decided during trial and completion of trial will take some time, this Court deems it appropriate to release the petitioners on regular bail.

8. Accordingly, without commenting on the merits of the case, the present petitions are allowed and the petitioners are ordered to be released on regular bail subject to their furnishing personal bonds and surety bonds to the satisfaction of concerned learned trial Court/Duty Magistrate, with the further condition that they shall get their mobile number registered in the trial Court for receiving messages on CIS system and shall not change their mobile number during the pendency of the case.

They shall also furnish their residential address to the trial Court as well as to the concerned police station and shall not change their residence without intimation to the concerned court. The court concerned may impose any other condition as it deems fit. In case of default, the trial Court is free to cancel the bail granted to the petitioners.

9. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case on the basis of material available before it.

(GURBIR SINGH)
JUDGE

September 17, 2024
sanjeev

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