

CRM-M-9119-2024

213 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-9119-2024 (O&M)

Date of Decision: 26.02.2024

RASHPAL SINGH @ JHIGAR

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rahul Garg, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

Mr. V.K. Kaushal, Advocate for the complainant.

HARPREET SINGH BRAR J. (Oral)

1. This is the 2nd petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 64 dated 19.06.2019 registered under Section 365 of Indian Penal Code (Sections 302, 201, 120-B of IPC and Sections 25/54/59 of Arms Act added later on) at Police Station Jhander, District Amritsar Rural, Amritsar.

2. The present FIR was lodged on the statement of Major Singh on the allegations that marriage of his elder sister Davinder Kaur took place with Harwant Singh and 3 children were born out of the wedlock. His nephew Onkar Singh has cleared ILETS and wanted to go abroad and they were collecting funds from their relatives in this regard. His brother-in-law Harwant Singh was having illicit relationship with other ladies since long and his attitude was never liked by the family members and they used to restrain Harwant Singh from indulging into such act. Due to this reason, there was a consistent dispute between the families. Kuldeep Singh son of Makhan Singh, is nephew of his brother-in-law Harwant Singh and both are

involved in committing indecent acts. On 17.06.2019, the complainant received a phone call from Malkit Singh, who informed him that his sister and her three children are missing and are not traceable. He along with his relatives tried to search them but they were not found. He is sure that his sister Davinder Kaur and her children have been kidnapped by his brother-in-law Harwant Singh and his nephew Kuldeep Singh. On the basis of the above complaint, initially the FIR was registered under Section 365 of Indian Penal Code.

3. Learned counsel for the petitioner *inter alia* contends that the first petition seeking regular bail to the petitioner was dismissed as withdrawn on 23.02.2023 and thereafter the petitioner has approached this Court on the ground of parity as the similarly situated co-accused namely Kuldeep Singh and Sona Singh @ Sonu have been granted the concession of regular bail by this Court vide orders dated 14.12.2023 and 07.02.2024 passed in CRM-M-26592-2023 and CRM-M-4922-2024 respectively.

4. Learned counsel for the petitioner further contends that complainant-Major Singh made a supplementary statement on 23.06.2019 in which, he has attributed that co-accused Manpreet Kaur is having illicit relationship with Harwant Singh and she has connived with her husband and the present petitioner killed his sister, his nephew and niece. Learned counsel for the petitioner further contends that the motive set up by the prosecution in this case is against co-accused Manpreet Kaur, who has been granted anticipatory bail by the Co-ordinate Bench of this Court on 05.05.2023 in case bearing CRM-M-1334-2023 and similarly situated co-accused namely Sona Singh @ Sonu was granted regular bail by this Court vide order dated 07.02.2024 (Annexure P-5) passed in CRM-M-4922-

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2024. The petitioner is behind the bars for the last more than 4 years and 7 months.

5. Per contra, learned State counsel opposes the grant of regular bail to the petitioner on the ground that the petitioner is involved in a heinous crime and prosecution has collected sufficient evidence to prove his complicity in the present case.

6. Mr. Vinod Kumar Kaushal, Advocate has put in appearance on behalf of the complainant and files his power of attorney. Same is taken on record. Learned counsel for the complainant opposes the prayer for grant of regular bail to the petitioner on the ground of seriousness of the offence.

7. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that complainant-Major Singh has already been partially examined and out of 46 prosecution witnesses cited, only 13 have been examined so far and the trial has not even reached at the half way stage. The custody certificate of the petitioner indicates that he is behind the bars for the last more than 4 years and 7 months and co-accused-Manpreet Kaur was granted anticipatory bail by this Court on 05.05.2023 in case bearing No.CRM-M-1334 of 2023. The culpability, if any, of the petitioner would be seen at the time of the trial.

8. The foundational concept of the criminal jurisprudence is to ensure speedy trial. Hon'ble the Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last court.

9. It has further been held in law that if a person is deprived of his

liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play.

10. In this regard, reference is being made to the law laid down by Hon'ble Supreme Court of India in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- ***Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao vs. State of Karnataka, (2202) 4 SCC 578, Babu Singh and others vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh vs. State of U.P. (2JJ.) and Fazal vs. State of Uttar Pradesh, (2012) 5 SCC 752.***

11. Accordingly, the present petition is allowed. The petitioner-Rashpal Singh @ Jhigar is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

12. The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case lest it may prejudice the outcome of the case pending before the trial Court.

13. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

26.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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