



CRM-M-16967-2024 (O&M)
Date of decision: 24.07.2024

...PETITIONER

V/S

...RESPONDENT

CRM-M-11072-2024 (O&M)
Date of decision: 24.07.2024

...PETITIONER

V/S

...RESPONDENT

Present: Mr. Yashpal Thakur, Advocate
for the petitioner in CRM-M-16967-2024
and Ms. Amandeep Kaur, Advocate,
Mr. Sandeep Gahlawat, Advocate
for the petitioner in CRM-M-11072-2024.
Mr. Sandeep Kumar, DAG Punjab.

HARPREET SINGH BRAR J. (ORAL)

1. The present petitions have been filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioners in case bearing FIR No. 72 dated 24.07.2022 registered under Sections 302, 34 of Indian Penal Code (Section 120-B and 201 of IPC added later on) at Police Station Bhadson District Patiala Punjab.

2. For the sake of brevity, facts are taken from CRM-M-16967-2024.

3. This is the second petition seeking grant of regular bail to the petitioner Arshpreet Kaur as the first petition was dismissed as withdrawn on 16.11.2023 (Annexure P-3). Learned counsel for the petitioner in CRM-M-



16967-2024 submits that now the complainant has been examined and as such there is change of circumstance, therefore he has preferred the present petition.

4. Present FIR was lodged on the statement of Dhanwant Singh on the allegations that he is doing a private job at Madhav factory at Akalgarht. His father namely Jasvir Singh (since deceased) was working in electricity department at Sub-Division Shameshpur, Amloh as a Clerk (LDC). It was alleged that on 23.7.2022 when he was present at home, at around 7:30 PM his father left home on his black colour splendour motorcycle PB-23-F3164 by saying to his mother Arshpreet Kaur that he is coming back shortly but till late night his father did not return back. Thereafter they called number of times on his mobile No. 95921-51994 but mobile phone was switched off. Thereafter for his search they reached at Bhadson, then they got to know that dead body of an unidentified person was found near to village Kizarpur and at that time the said dead Body was kept in Mortuary of Civil Hospital Nabha. Then he along with his uncle Lakhveer Singh reached at Civil Hospital Nabha Mortuary and identified the said dead-body to that of his father. It is alleged that in the previous night some unknown person had murdered his father by giving sharp edged injuries on his head. On the basis of aforesaid allegations, FIR(supra) was lodged.

5. Learned counsel for the petitioner(s) *inter alia* contends that perusal of the FIR(supra) indicates that petitioners have not been named in the same and petitioners have been nominated as accused only on 29.08.2022, when brother of the deceased suffered a statement before the police that deceased was murdered by his wife Arshpreet Kaur and Gurdeep Singh @ Kaku (petitioners herein). On 30.08.2022, Jasmil Khan made a statement



before the police that petitioners approached him and they suffered an extra judicial confession. Thereafter, the petitioners were arrested on 30.08.2022. Learned counsel for the petitioners contends that there is no finger print or any FSL report to link the petitioners with the alleged weapon and recovery made from the petitioners have been planted by the police and the extra judicial confession suffered before Jasmil Khan does not inspire any confidence and the veracity of the said extra judicial confessional statement would be tested during the trial.

6. Per contra, the learned State counsel opposes the prayer made by learned counsel for the petitioners on the ground that petitioners are accused of heinous crime and sufficient material is available on record to indicate their complicity in the alleged occurrence. However, he could not controvert the fact that petitioners are not involved in any other case.

7. Having heard the learned counsel for the parties and after perusing the custody certificates, it transpires that petitioner-Gurdeep Singh @ Kaku is behind the bars since 01 year 10 months and 18 days and petitioner-Arshpreet Kaur is behind the bars since 01 year 10 months and 10 days as on 23.07.2024. They are not involved in any other case. Trial of the case is likely to take long time to conclude as out of total 20 prosecution witnesses, only 04 have been examined so far. Thus, trial of the case has not reached even half way mark. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

8. A two Judge Bench of Hon’ble Supreme Court in ‘Satender Kumar Antil v. CBI’ (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a demo cracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

9. In view of the above, the present petitions are allowed and petitioners-Arshpreet Kaur and Gurdeep Singh @ Kaku are ordered to be released on regular bail, subject to their furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

10. 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.

July 24, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No