

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : March 06, 2024

Pronounced on : March 11, 2024

CRM-M-29688-2023

Harpreet Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Vipin Mahajan, Advocate for the petitioner.

Mr. Madhur Sharma, DAG, Punjab.

DEEPAK GUPTA, J.(Oral)

By way of this petition filed under Section 439 Cr.P.C., petitioner prays for his release on regular bail in case FIR No.179 dated 25.11.2022 under Section 302 /34 of IPC, registered at Police Station Shri Hargobindpur, Police District Batala, District Gurdaspur.

2. Status report has already been filed.
3. FIR was lodged on the statement dated 25.11.2022 of Smt. Sharanjit Kaur, resident of Mohalla Bajaja, Ward No.6, Shri Hargobindpur, the mother of deceased Nanak Singh. As per the said statement, her younger son Nanak Singh (deceased) was working in a company at Jam Nagar. On 23.11.2022 at about 5 p.m., her son Nanak Singh returned from Jam Nagar after about 3 months and then left home alongwith Harpreet Singh (*petitioner*) and Karan S/o Jassa, both residents

of Village Cheema Khudi on their motorcycles, informing her that he (Nanak Singh) will return soon. However, despite lapse of two hours, Nanak Singh did not return. He did not even attend his mobile. Search was conducted in the area, but no information received. On the next day, i.e. 24.11.2022, she went to the house of petitioner – Harpreet Singh to enquire. Harpreet Singh was found at his home and told that they had dropped Nanak Singh at Shri Hargobindpur on the previous day itself. Complainant then went to the house of Karan, but he was not present. It was further mentioned that on that day at about 9 a.m., she got information that dead body of her son was lying in sugarcane fields at Village Mari Buchian. She went there and identified the dead body of her son Nanak Singh with injury marks on the back side of his head. It was also alleged that Nanak Singh was having ₹35,000/-. Complainant also mentioned that about 06 months ago, her son Nanak Singh had altercation with petitioner Harpreet Singh and Karan and that because of that enmity, both of them had murdered Nanak Singh by giving him some intoxicating substance.

4. Necessary investigation was conducted. Petitioner Harpreet Singh was arrested on 27.11.2022. However, despite repeated raids conducted to arrest Karan, he could not be traced and so, P.O. proceedings were initiated against him. After completion of investigation, final report under Section 173 Cr.P.C. was presented to prosecute the petitioner.

5. It is contended by learned counsel that petitioner has been falsely implicated merely on the basis of suspicion; that no recovery has been effected from him; that though it was alleged in the FIR that Nanak Singh was murdered by administering him some intoxicating substance, but as per the report of chemical examiner, no poisonous or intoxicating substance was detected; that cause of death could not be ascertained as per the finding of the postmortem report; that there was no legally admissible evidence against the petitioner; that as a matter of fact, deceased was a drug addict, who died a natural death; and that trial may take time to conclude and so, in all these circumstances, he be allowed bail.

6. Opposing the bail petition, learned State counsel submits that petitioner was last seen in the company of deceased on 23.11.2022 and that fact is proved by the testimony of complainant – Smt. Sharanjit Kaur and that of Raju, who were examined during trial as PW2 and PW3 respectively. Learned State counsel also points out that an injury was found on the person of deceased during postmortem examination. Learned State counsel also points out towards the gravity of the offence and prays for rejecting the petition.

7. Submissions of both the sides have been considered.

8. As per the allegations made in the FIR, Nanak Singh had been murdered by giving him some intoxicating substance. However, as per postmortem report, although an injury in the form of an abrasion was

found on the occipital region of the head of the deceased, but cause of death was reserved till receipt of report of chemical examiner. After getting the report of the chemical examiner, subsequent opinion (Annexure P-2) was taken from the Board of Doctors, who opined that no poison was detected in the histopathological report received from GMC, Amritsar. They further opined that cause of death could not be ascertained.

9. In the circumstances as mentioned above, the only evidence as pointed out by learned State counsel against the petitioner is last seen evidence.

10. Learned counsel for the petitioner has referred to “*Sahadevan and another Vs. State of Tamil Nadu*”, 2012(2) RCR (Criminal) 899, so as to contend that last seen evidence in itself cannot be a reason to hold a person guilty, when the case is dependent upon circumstantial evidence.

11. In *Sahadevan's* case (*supra*), Hon’ble Supreme Court held as under :-

“31. With the development of law, the theory of last seen has become a definite tool in the hands of the prosecution to establish the guilt of the accused. This concept is also accepted in various judgments of this Court. The Court has taken the consistent view that where the only circumstantial evidence taken resort to by the prosecution is that the accused and deceased were last seen together, it may raise suspicion but it is not independently sufficient to lead to a finding of guilt. In **Arjun Marik v. State of Bihar**, [1994 Supp.(2) SCC 372], this Court observed that it is settled law that the only circumstance of last seen will not

complete the chain of circumstances to record a finding that it is consistent only with the hypothesis of guilt of the accused and, therefore, no conviction, on that basis alone, can be founded.

32. Even in the case of **State of Karnataka v. M.V. Mahesh, 2003(2) R.C.R.(Criminal) 106 : 2004(1) Apex Criminal 22 : [(2003)3 SCC 353]**, this Court held that merely being last seen together is not enough. What has to be established in a case of this nature is definite evidence to indicate that the deceased had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together. No such clinching evidence is put forth. It is no doubt true that even in the absence corpus delicti, it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the Court.

33. In the case of **State of U.P. v. Satish, 2005(1) Apex Criminal 437 : [(2005)3 SCC 114]**, this Court had stated that the principle of last seen comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

34. Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. But this theory should be applied while taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.”

12. In view of the aforesaid facts and circumstances, when the case is dependent upon the circumstantial evidence and that too only on the last seen evidence, as has been brought to the notice of this Court, it will be a matter of trial as to whether the same may in itself be sufficient to hold the petitioner guilty.

13. At this stage, the Court cannot ignore the fact that when the complainant, i.e., the mother of deceased Nanak Singh visited the house of the petitioner on 24.11.2022, he was present there and explained that they had already dropped the deceased at Shri Hargobindpur, though the other person, namely Karan, who had also accompanied the deceased, was found to be missing.

14. Petitioner is in custody since 27.11.2022 i.e. for the last more than 01 year and 03 months and the trial is likely to take long time to conclude.

15. Keeping in view all the aforesaid facts and circumstances, but without commenting anything further on the merits of the case, petitioner is admitted to bail. He is ordered to be released on regular bail on his furnishing bail bonds and surety bonds to the satisfaction of learned Trial Court/Duty Magistrate concerned, on usual terms and conditions.

Allowed.

March 11, 2024

Sarita

(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes

Whether reportable: Yes