

213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.33070 of 2022 (O&M)
Date of decision : 06.02.2024

Jagdeep Singh @ Babbu Bajwa Petitioner

versus

State of Punjab Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. K.S.Mehta, Advocate
for the petitioner.

Mr. Iqbal Singh Mann, DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

CRM-4235-2024

For the reasons recorded in the application, the same is
allowed.

Documents Annexures P-5 to P-11 are taken on record.

Main case

1 This second petition has been filed under Section 439 Cr.P.C.
for grant of regular bail to the petitioner in case F.I.R. No.21 dated
22.03.2020 registered under Sections 302/397/201 IPC at Police Station
Sadar Nawanshahar.

2 On 22.03.2020, FIR No.21 was registered on the information
received from Darbara Singh S/o Dhanna Singh with respect to death of
Jasvir Singh S/o Tara Singh alleging as under :-

*“Statement of Darbara Singh son of Dhanna Singh resident of Ward
no. 1 Siana, Balachaur, Distt. Shaheed Bhagat Singh Nagar age*

about 53 years 94179-20148. Stated that I am residing at the above said address and for quite some time I am doing job of reciting Paath in the Gurdwara Sahib and in the nearby houses with the help of other Pathi(s). Now I along with the help of Jasvir Singh son of Tara Singh resident of ward number 1 Siana Balachaur, my co-villager and other Pathi Singh(s) we were performing path in the Gurdwara and in the house of Kulbir Singh Aaji Mal resident of Sultanpur (Rahon) area and for performing our shifts I and Jasvir Singh had been coming and going as per our schedule. Yesterday after performing my shift of the evening I had started for my village Siana on my Aactiva at about 8:30 PM. For his shift Jasvir Singh above said was to come from village Siena at 10 PM. When, while driving my active, I had reached near cremation ground of Village Ramgarh on the main road of that I saw a scooty Maestro lying fallen on right side of the road and a person lying fallen near it having sustained injuries. When I alighted from my scooty and went towards them and saw Jasvir Singh son of Tara Singh resident of Ward no. 1 Siana Balachaur abovesaid. I physically checked him who had succumbed to his injuries at the spot who had been given injuries by the driver of an unknown vehicle. As I could not find any vehicle at the spot and driver of the offending vehicle had already fled from the spot, I informed about this incident, subsequently, to the family of Jasvir Singh and Local police. As it had gone late in the night dead, body of Jasvir Singh had to be taken to the mortuary of civil Hospital on arrival of the police but as there was no space in that mortuary, dead body of Jasvir Singh was left in the mortuary of Pandora Mohalla Nawanshahr cremation ground. Death of Jasvir Singh has occurred due to injuries sustained in an accident where in his Scooty was brushed/hit by Driver of an unknown vehicle. Appropriate proceedings be taken against driver of the offending vehicle after locating him. Now I was coming along with heirs of Jasvir Singh for proceedings that you have met us, action be taken.”

3 FIR was initially registered for offences punishable under Sections 304-A/279 IPC believing it to be a road side accident. However after the post-mortem was conducted following injuries were found on the

body of the deceased :-

“1. Incised wound of 3 cm x 5 cm on the right side of chest. 3 cm above lower rib. It is penetrating to abdominal cavity and is incising liver. It has caused haemoperitoneum.

2. Incised wound of 3 cm x 5 cm on antero lateral part of right side of chest with fracture of 6th rib. It is penetrating pleura and going to thoracic cavity cause lung laceration. It has caused haemo thorax.

3. Incised wound about 2.5 cm x 1 cm penetrating wound reaching pleura causing lung laceration and haemothorax present on antero lateral part of left side of chest.

4. Incised wound on left side of head on temporal part 1 cm above ear (5 cm x 1 cm). No underlying fracture seen.

5. Incised wound on the right side of face on front of left ear. It is about 4 cm x 3 cm underlying bone is not fracture.

6. Incised wound on left hand involving index finger. It is about 10 cm x 3 cm.”

4 As per the medical opinion cause of death in the case was said to be shock resulting from haemorrhage due to injury No.1, 2 & 3 which were all declared as ante-mortem. Prosecution claims that during investigation the present petitioner along with his co-accused Harsh s/o Surinder Kumar who were in police custody in FIR No.47 dated 11.05.2020 registered for offences punishable under Sections 302/397 IPC at P.S. Rahon, District SBS Nagar made 11 disclosures regarding previous offences committed by them and in one of those disclosures it was disclosed as under :-

“that about 1-2 days prior to lockdown (imposed on 23.03.2020, on

account of Covid-19 pandemic) petitioner-Jagdip Singh @ Babbu Bajwa, Harsh, Hardip Singh @ Dipi and Harwinderjit Singh @ Honey resident of Jaini Mohalla, Rahon, were together at the house of Harsh and they had beer and then they all went to Machhiwara road on Aviator scooter of Hardip Singh @ Dipi and at that time petitioner- Jagdip Singh @ Babbu Bajwa was carrying dagger and sword and they purchased a liquor bottle from liquor vend and they all except Hardip Singh @ Dipi consumed it and thereafter they went to Ghakkewal road and robbed a mobile phone and Rs.50/- from a migrant by showing him dagger and sword, who had come from canal side and thereafter they all went towards Jadla side and got petrol of Rs.50/- in the Aviator scooter of Hardip Singh @ Dipi from petrol pump between Jadla and Rahon and thereafter they went to Ranewal canal side and then they reached near crematorium of village Ramgarh, where a Sikh person (Jasvir Singh deceased) came on his scooter and then petitioner- Jagdip Singh @ Babbu Bajwa asked Harwinderjit Singh @ Honey to give kick blow to the moving scooter of said Sikh person (deceased Jasvir Singh), however, Harsh gave leg blow to the scooter of deceased Jasvir Singh and due to which deceased Jasvir Singh got imbalance, but he did not fall and then petitioner- Jagdip Singh @ Babbu Bajwa parked his scooter in front of the scooter of deceased Jasvir Singh and asked him to give whatever he was possessing, but deceased Jasvir Singh put resistance and then petitioner- Jagdip Singh @ Babbu Bajwa handed over sword to Harsh and gave dagger blow to deceased Jasvir Singh in his chest while he was sitting on his scooter and deceased fell on the road along with his scooter and then petitioner-Jagdip Singh @ Babbu Bajwa gave 4-5 more blows of dagger to deceased Jasvir Singh while he was lying on the road and then he took out wallet of deceased Jasvir Singh from the side pocket of his Kurta (shirt) worn by him, which was containing Rs.500/- currency notes, ATM Card and Aadhar Card of deceased and then Harsh gave sword blow to the scooter of deceased Jasvir Singh and due to which scooter of deceased Jasvir Singh got damaged and then they went towards Ranewal Bagh side and they shared Rs.500/- currency notes amongst themselves and thrown wallet and documents in the canal.”

5 On the basis of the afore-stated disclosure alleged to have been made by present petitioner offences punishable under Section 302/397 IPC were added deleted that punishable under Section 304-A & 279 IPC.

6 Learned counsel for the petitioner submits that apart from the aforesaid alleged confessional statement made by the petitioner while in police custody which is inadmissible in evidence being hit by Section 25 of the Evidence Act, there is nothing incriminating against the petitioner.

7 On being asked, learned State counsel submits that one daggar was recovered from the petitioner in FIR No.47 dated 11.05.2020 but the same was not sent for forensic examination. Thus apart from the confessional statement made by the present petitioner, there is nothing incriminating against the petitioner.

8 Custody certificate by way of affidavit of Shivraj Singh, Superintendent of Central Jail, Ludhiana on behalf of State has been filed. The same is taken on record. As per the same the petitioner has undergone actual custody of 3 years, 8 months and 11 days.

9 Learned counsel for the petitioner submits that the petitioner is behind bars for more than 3 years, 8 months and 11 days. Out of 29 witnesses, 7 witnesses stand examined and 5 have been given up. Thus trial is not likely to conclude in near future. In the light of circumstances wherein there is nothing incriminating evidence against the petitioner, apart from his own confessional statement while in police custody, his custody cannot be prolonged as a punitive measure.

10 Learned State counsel is not in a position to dispute the aforementioned factual assertions based on record.

11 I have heard learned counsel for the parties and have gone through the records of the case.

12 Without commenting on the merits of the case, keeping in view the allegations and the nature of evidence against the petitioner, the custody already suffered by the petitioner and the fact that the trial is not likely to conclude in the near future, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

13 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

06.02.2024

Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No