

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M-46772-2023

Date of decision : 25.01.2024

Gursahib Singh @ Pargat Singh @ Shabha **Petitioner**

versus

State of Punjab **Respondent**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Harchand Singh Batth, Advocate
for the petitioner.

Mr. Iqbal Singh Mann, DAG, Punjab.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.263 dated 18.07.2020, registered for the offences punishable under Sections 302, 201, 364 and 365 of IPC at Police Station Goindwal Sahib, District Tarn Taran.

2. As per the contents of the FIR, it was alleged as under:-

“Stated that I am the resident of the abovementioned address and doing labour work. On 18.07.2020, an FIR No.263 dated 18.07.2020 under Section 365 IPC was registered at Police Station Goindwal Sahib, District Tarn Tara on my statement against the unidentified persons regarding the kidnapping of my son Amritpal Singh. Then on 19.07.2020, one dead body of an unidentified child was recovered from the Lohar canal. Upon receiving this Information, I alongwith my wife and Gursahib Singh alias Pargat Singh son of Jagtar Singh, resident of Village Lohar, reached on the spot. On that day. Gursahib Singh @ Pargat Singh fold us that this is not the dead body of Amritpal Singh on the asking of Pargat Singh Gursahib

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Singh, we returned back without identifying that dead body. The police have kept the dead body recovered from Lohar canal in the dead house, Civil Hospital, Tarn Taran. On 20.07.2020, I alongwith my father-in-law Hira Singh and my wife Sarabjit Kaur unidentified the dead body by visiting the dead house, Civil Hospital, Tarn Taran and informed that this the dead body of my son Amritpal Singh upon the murder of my son and upon the recovery of the dead body from the Lohar canal, you have added the offence under Section 302, 201 IPC on 14.08.2023 in the FIR registered at my instance. Now my wife Sarabjit Kaur have informed that till now, I was kept mum due to fear because I have illicit relations with the abovementioned Pargat Singh @ Gursanib Singh son of Jagtar Singh, resident of Lohar after I was going to work. Pargat Singh Gursahib Singh often visit my home. My son Amitpal Singh was feeling bad about this. He often used to say my wife to restrain Pargat Singh Gursahib Singh for visiting our home. Pargat Singh @ Gursahib Singh have many times threatened to my wife to get rid off the hurdle. My wile have not agreed. My wife have withdrawn from her relation with Pargat Singh Gursahib Singh. Pargat Singh @ Gursahib Singh was angry about this. Due to this grudge, Pargat Singh @ Gursahib Singh have murdered my son Amritpal Singh, I am fully sure about this. Because my son was young and he become angry because of the visit of Pargat Singh@ Gursahib Singh to his home. Due to this reason, because of the objection of my wife Sarabjit Kaur. Pargat Singh Gursahib Singh son of Jagtar Singh, resident of Lohar have murdered my son Amritpal Singh and thrown his body in the canal. Due legal action may be taken against him. Statement is recorded, is correct.”

3. FIR was registered against unknown persons. However, PW-4

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that he saw the deceased last with the present petitioner and on that basis the petitioner was implicated.

4. Counsel for the petitioner submits that said Sohan Singh appeared as PW-4 and has not supported the prosecution and was declared hostile. Testimony of PW-4 reads as under:-

“1. Stated that I am timber merchant by profession. On 16.07.2020, at about 10:00-11:00 A.M. I was going for my work in village Lohar. A Langar of fritters was going on at Chohla Sahib Road at village Lohar by the side of canal. I also per take Langar. I saw son of Jagtar Singh was also having Langar there alongwith other public. Thereafter, I left the spot of Langar for my work. Except this I had no knowledge about any other thing. I had not made statement to police in this case.

At this stage Ld. Addl. P.P for the state, has requested that witness is resiling about making statement to police and intentionally concealing entire facts, as such, he may be declared hostile and be allowed to be cross examined and be confronted with his previous statement by putting leading questions.

Request heard and allowed.

XXXX examination by Sh. Charanjit Singh, Addl. P.P for the state.

2. I knew Pargat Singh alias Gursahib Singh son of Jagtar Singh present in Court, he is resident of our village. It is incorrect to suggest that I made statement mark **PW4/A** to police. Amritpal Singh alias Arsh son of Jagtar Singh is related to me being cousin from collaterals. It is neither a fact nor I got recorded in statement mark PW4/A that Amritpal Singh alias Arsh son of Jagtar Singh who is related to me being cousin from collaterals, was having Langar of fritters or that Pargat Singh alias Gursahib Singh son of Jagtar Singh also came there and he alongwith Amritpal Singh were

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Langar or that Pargat Singh alias Gursahib Singh had some talk with Amritpal Singh or that they both went towards by side of drain. The attention of the witness is drawn towards statement mark PW4/A from Portion Point A1 to A2 where it is so recorded but witness is denying having so recorded.

3. It is neither a fact nor I got recorded in statement mark PW4/A that on seeing them I did not bother much as Pargat Singh alias Gursahib Singh was having visiting terms in the house of Amritpal Singh or that my brother Jagtar Singh and my sister-in-law Sarbjit Kaur used to work in the fields of Pargat Singh alias Gursahib Singh or that Pargat Singh alias Gursahib Singh used to visit the house of Jagtar Singh often or that I have full belief that the murder of Amritpal Singh was committed by Pargat Singh alias Gursahib Singh or that Pargat Singh alias Gursahib Singh by committing murder did sin or I made statement against him for taking action against him. The attention of the witness is drawn towards statement mark PW4/A from Portion Point A2 to A3 where it is so recorded but witness is denying having so recorded.

4. It is correct that I had seen deceased Amritpal Singh alias Arsh taking Langar. It is incorrect to suggest that I had seen Amritpal Singh and accused talking with each other at the Langar. It is incorrect to suggest that I had seen deceased and accused going together by the side of canal from the Langar. It is correct that Amritpal Singh was found dead. It is incorrect to suggest that accused present in Court had committed murder of Amritpal Singh after taking him from the Langar. It is incorrect to suggest that being won over and compromised with the accused I am resiling from the statement given by me to police. It is wrong to suggest that I am denying witnessing accused taking away deceased from the Langar to help the accused. I do not

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identify the photographs mark P1 to P5. It is incorrect to suggest that mark P1 to P5 are of my cousin Amritpal Singh deceased and of the place where dead body was recovered. It is incorrect to suggest that I am denying the identification being won over. It is incorrect to suggest that I am concealing the material facts witnessed by me to help the accused. It is wrong to suggest that I have deposed falsely.

XXXX by Sh. Satnam Singh, Advocate, defence counsel for accused.

5. Opportunity given NIL.

Court questions:-

Q1 : Do you have any suspicion or clue regarding the who committed murder of Amritpal Singh?

A1 : No, I have no idea.

Q2 : Did you make any statement before the police ?

A2 : No, police never recorded any statement of mine.

Q3 : Has anyone pressurized or compelled or threatened you to depose in the court today?

A3 : No one has pressurized or compelled or threatened me to depose in the court today. I have given my statement voluntarily as per my knowledge.”

5. Apart from that, it is being contended that complainant who appeared as PW-1 has also not supported the case of prosecution. Though prosecution and its report has state that PW-2 Sarabjit Kaur-the mother of the deceased has supported the prosecution version. Testimony of Sarabjit Kaur has been placed on record by counsel for the petitioner as Annexure P-4.

The same reads as under:-

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“1. Stated that I am resident of above said address and a household lady. I am having 3 children, two daughters and one son, namely, Amritpal Singh alias Arsh (since deceased), Amritpal Singh alias Arsh was studying in 6 class in 2020. On 16.07.2020, it was Sankranti. At about 09:00 A.M. my son Amritpal Singh went to fake Langar at bridge canal of our village. We kept on waiting for him 04:00 PM. but Amritpal Singh, did not return During this period at about 02:00 P.M. I received a telephonic call from Gursahib Singh on the mobile phone number mentioned above, and at that time Gursahib Singh inquired from me if Arsh had come home and I told him that Amritpal Singh alias Arsh has not returned so far. Thereafter, my husband went to the fields with the mobile phone. At about 03:00 P.M. I called the mobile phone of my husband from the mobile phone of my neighbour and expressed my, anxiety at the non-return of Amritpal Singh alias Arsh. Then, my husband returned to the house and we started looking around for our son, contrail

2. At about 06:30 P.M. we got an announcement made in the village Gurudwara about the missing of Amritpal Singh alias Arsh, but we did not get any response. Thereafter, Gursahib Singh came to our house and accompanied us to look for Amritpal Singh alias Arsh. On the next day Gursahib Singh took us to Bir Baba Budha Sahib, Gurudwara to look for Amritpal Singh alias Arsh but we did not find any clue about the whereabouts of my son. We returned back late in the evening and next day morning inquired about my son from our relatives.

3. Finally, on 18.07.2020, I and my husband went to police station and made complaint to police about missing of our Amritpal Singh alias Arsh. My husband got recorded his statement to police, Ex.P1, on which I identify the signatures of my husband. On the fourth day

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i.e. on the next day after lodging the FIR, we received information from Gursahib Singh that he has seen a dead body in the minor canal and we immediately rushed there. However, Gursahib Singh stopped us from seeing the dead body, and represented that the dead body is not of Amritpal Singh alias Arsh. The Police thereafter brought the said dead body to Civil Hospital, Tarn Taran and next day called us to the Hospital for identification of the dead body. On reaching the Hospital we identified the dead body vide memo Ex. P2, as that of Amritpal Singh alias Arsh.

3. On the next day, the police took the dead body to the Govt. Medical college, Amritsar for post-mortem. On 22.07.2020, the dead body was handed over to us. After the body was seen the minor canal, Gursahib Singh stopped contacting us or meeting us. He also failed to respond to our phone calls and the said conduct of Gursahib Singh made us suspicious about his role.

4. I along with my children used to work in the fields of Gursahib Singh for sowing paddy crop. Gursahib Singh used to keep a bad eye on me. My son used to feel bad about the conduct of Gursahib Singh and used to protest against the same. Gursahib Singh, used to force me to have physical relation with him but my son was against this. Due to this Gursahib Singh, has committed the murder of my son I gave my statement to police. I had never told my husband about the conduct of Gursahib Singh or that he used to compel me for physical relation. I also moved application mark P8 and P9, which bears my signatures at point A. identify the same. I have seen photographs mark P1 to P5 on the judicial file, which are of the spot of recovery of dead body and of body of my son. I have seen the accused Gursahib Singh, produced through Video Conferencing, and I identify him as Gursahib Singh alias Sabha who has committed murder of my son.

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5. From 16.07.2020 to 16.09.2020 police came to my house a number of times. I had not made any statement to police qua the missing of my son or death of my son. Police had recorded my statement on 18.07.2020.

At this stage, learned defence counsel requested to supply such statement dated 18.07.2020.

On perusal of the file no such statement dated 18.07.2020 is on record.

6. The police had not recorded the facts as stated by me and recorded my statement of their own. The police recorded mobile number of mine as well as of accused in the statement of their own. I had not got recorded in statement dated 16.09.2020 that Jagtar Singh of Lohar had came to my house on 16.07.2020 at 09:00 A.M. and after telling about to work to my husband had gone away. It is correct that on 16.07.2020 at about 09:00 A.M. my son was present in our house.

7. I had not got recorded to police that "about four years ago Pargat Singh alias Gursahib Singh and myself had developed illicit relations". I got recorded to police that at about 09:00 A.M. my son Amritpal Singh went to take langar at bridge canal of our village.

The witness was confronted to statement mark D2 where these facts in verbatim were not mentioned.

8. I got mentioned in statement mark D2 that "We kept on waiting for him till 04:00 P.M. but Amritpal Singh, did not return".

The witness was confronted to statement mark D2 where these facts in verbatim were not mentioned.

9. I got mentioned in statement mark D2 that "My husband had went to the fields with our mobile phone".

The attention of the witness is drawn towards statement mark D2, where it is not so recorded.

10. I got mentioned in statement mark D2 that "At about 03:00P.M. I called the mobile phone of my husband from the mobile phone of my neighbor and

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expressed my anxiety at the non-return of Amritpal Singh alias Arsh. Then, my husband returned to the house and we started looking around for our son" or that "At about 06:30 P.M. we got an announcement made in the village Gurdwara about the missing of Amritpal Singh alias Arsh, but we did not get any response. Thereafter, Gursahib Singh came to our house and accompanied us to look for Amritpal Singh alias Arsh. On the next day Gursahib singh took us to Bir Baba Budha Sahib, Gurudwara to look for Amritpal Singh alias Arsh but we did not find any clue about the whereabouts of my son. We returned back late in the evening and next day morning inquired about my son from our relatives".

The attention of the witness is drawn towards statement mark D2, where these facts are not so recorded.

11. I got mentioned in statement mark D2 that "On the next day, the police took the dead body to the Govt. Medical college, Amritsar for post-mortem. On 22.07.2020, the dead body was handed over to us. After the body was seen the minor canal, Gursahib Singh stopped contacting us or meeting us. He also failed to respond to our phone calls and the said conduct of Gursahib Singh made us suspicious about his role".

The attention of the witness is drawn towards statement mark D2, where these facts are not so recorded.

12. I got mentioned in statement mark D2 that I along with my children used to work in the fields of Gursahib Singh for sowing paddy crop. Gursahib Singh used to keep a bad eye on me. My son used to feel bad about the conduct of Gunahib Singh and used to protest against the same. Gursahib Singh used to force me to have physical relation with him but my son was against this. Due to this Gunahib Singh, has committed the murder of my son. 1

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gave my statement to police. I had never told my husband about the conduct of Gunahib Singh or that he used to compel me for physical relation. I also moved application mark PB and P9, which bears my signatures at point A Identify the same. I have seen photographs mark P1 to P5 on the judicial file. which are of the spot of recovery of dead body and of body of my son. I have seen the accused Gursahib Singh, produced through Video Conferencing. and I identify him as Gursahib Singh alias Sabha who has committed murder of my son.

The attention of the witness is drawn towards statement mark D2, where these facts are not so recorded.

13. I do not know the extent of land owned by the accused Pargat Singh alias Gursahib Singh. We came to know about the dead body on 18.07.2020 at about 10:00 A.M., when we went there accused also accompanied us. Police did not record any statement of mine on 18.07.2020. I cannot say if police recorded the statement of accused Pargat Singh alias Gursahib Singh or any other person on 18.07.2020. Police was taken to the spot where dead body was lying. Police conducted writing work there, volunteered, but we were not allowed to identify the dead body. The police had taken the dead body for post-mortem examination.

14. My father Hira Singh and Tarsem Singh also reached the Hospital when the body was taken there for post-mortem. Sohan Singh is my brother-in-law (Deaar (in Punjabi). From 16.07.2020 Sohan Singh also remained with me. The post-mortem was conducted on 22.07.2020. Sohan Singh, Hira Singh and Tarsem Singh remained with us till 22.07.2020.

15. It is wrong to suggest that accused has been falsely implicated and has no role to play in this case. It is wrong to suggest that accused never restrained us from identifying the dead body as alleged by me in my

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examination in chief. It is wrong to suggest that I have deposed falsely.”

6. From the reading of the testimony of Sarabjit Kaur, though it is evident that she accuses the present petitioner of murdering her son however beyond the aforesaid bald allegation, there is nothing and State counsel also does not dispute that so far as last seen theory is concerned, the same was introduced by Sohan Singh only and he has resiled from the same when he deposed before the trial Court.

7. Keeping in view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

8. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

25.01.2024

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No