

(2013) 09 P&H CK 0434

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM. M-11459 of 2013

Gurmeet Singh

APPELLANT

Vs

Gurdev Singh and Another

RESPONDENT

Date of Decision: Sept. 13, 2013**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 148, 149, 201, 302, 34

Hon'ble Judges: Tej Pratap Singh Mann, J**Bench:** Single Bench

Advocate: P.S. Jammu, for the Appellant; S.K. Monga, Advocate for Respondent No. 1 and Ms. Preeti Choudhary, Deputy. A.G., Haryana for Respondent No. 2-State, for the Respondent

Judgement

Tej Pratap Singh Mann, J.

Prayer has been made for the grant of regular bail to the petitioner during the pendency of the trial of the case arising out of criminal complaint No. 361/11 dated 11.2.2011 titled "Gurdev Singh Vs. Jaswant Singh and others", under Sections 302/201/148 and 149 IPC. Initially, FIR No. 151 dated 27.9.2010 under Sections 302/201/34 IPC was registered at the instance of complainant Gurdev Singh against the petitioner and four others, namely, Jaswant Singh, Basant Singh, Gurmail Singh and Gurjit Singh @ Nikku. During the investigation of the case, the petitioner and his brothers Jaswant Singh and Basant Singh were found innocent. On 24.12.2010, challan was presented only against Gurmail Singh and Gurjit Singh @ Nikku. Before the case could be committed qua Gurmail Singh and Gurjit Singh @ Nikku, the complainant filed the aforementioned criminal complaint on 11.2.2011. After recording of the preliminary evidence, learned Sub Divisional Judicial Magistrate, Ellenabad passed order dated 19.9.2011 summoning the petitioner and his two brothers Jaswant Singh and Basant Singh to face the charges of murder and destruction of evidence. It may be mentioned here that before the summoning

order could be passed, learned Sub Divisional Judicial Magistrate, Ellenabad had, on 15.3.2011, committed the FIR case to the Court of Sessions. After being summoned in the aforementioned criminal complaint as accused, the petitioner and his brothers Jaswant Singh and Basant Singh could not be arrested. Proceedings were initiated to get them declared as proclaimed offenders. However, before any such order could be passed, the petitioner was arrested on 1.12.2011. On 24.1.2012, the petitioner was produced before the Court of Sessions when the State case as well as the complaint case were clubbed and on that very day, the charges were also framed. The Court has been informed by the State counsel that out of the long list of twenty three witnesses, the prosecution has already examined eight of its witnesses. However, as per the counsel for the complainant, eleven witnesses have been examined so far.

2. In order to challenge the order dated 19.9.2011 passed by the Sub Divisional Judicial Magistrate, Ellenabad summoning them as accused, the petitioner and his brothers Jaswant Singh and Basant Singh filed separate petitions u/s 482 Cr.P.C. While issuing notice on the said petitions, a co-ordinate Bench of this Court stayed the operation of the summoning order. However, on 30.1.2013, another co-ordinate Bench of this Court found no merit in the said petitions and dismissed the same. Aggrieved of the declining of their petitions whereby they had challenged the passing of the summoning order, Jaswant Singh and Basant Singh, co-accused of the petitioner have moved the Hon"ble Supreme Court by filing separate SLPs and while issuing notice, the Hon"ble Supreme Court has stayed the operation of the summoning order dated 19.9.2011. Though the aforementioned order was passed in the presence of the counsel for the complainant yet after the passing of the said order, counter has been filed by the complainant, but the main petitions, as informed by the counsel for the parties, have not been listed for hearing so far.

3. In the complaint filed by complainant-Gurdev Singh, it was alleged that on 23.9.2010 at about 12.00 noon, accused Gurmail Singh and Gurjit Singh had called him and his nephew Ganga Singh and, thereafter, Gurmail Singh and Gurjit Singh alongwith Ganga Singh left on a motor cycle. When the complainant came out of his house, he saw that at a little distance, Jaswant Singh and Gurmeet Singh, petitioner also started following the aforementioned three persons. The four accused took Ganga Singh and proceeded towards Ghaggar river. Accused Basant Singh, another brother of the petitioner, was also with them. When Ganga Singh did not return home even after 2/3 hours, the complainant tried to search for him. At about 4/4.30 p.m., when Gurmit Singh son of Jodh Singh and Ratan Singh son of Kartar Singh, were going towards Talwara Ther and reached near Amritsar Kalan Ghat, they saw that the petitioner and his brother Jaswant Singh were holding Ganga Singh from his hands and legs whereas Basant Singh, Gurjit Singh @ Nikku and Gurmail Singh were inflicting injuries to Ganga Singh. Thereafter, in connivance with each other, all the five accused in order to kill Ganga Singh and with an intention to dispose of his body threw him in the deep waters of Ghaggar.

4. From the version of the complainant as given in his complaint dated 11.2.2011, it is made out that at the time of the alleged occurrence, the petitioner was not armed with any weapon. He, alongwith his brother Jaswant Singh, is said to have caught hold of Ganga Singh whereas injuries were caused by three other accused, namely, Basant Singh, Gurjit Singh @ Nikku and Gurmail Singh. Later on, the petitioner alongwith his co-accused was said to have thrown the dead body in the deep waters of Ghaggar river so as to destroy the evidence.

5. Be that as it may, the petitioner is in custody for the last more than one year and nine months. The operation of the summoning order dated 19.9.2011 passed by the Sub Divisional Judicial Magistrate, Ellenabad summoning the petitioner and his two brothers Jaswant Singh and Basant Singh has been stayed by the Hon"ble Supreme Court. Merely because, the two brothers of the petitioners, who could not be arrested earlier, were declared proclaimed offenders, is no ground to visualize that in the event of the petitioner being released on bail, he is also likely to abscond. Infact, Jaswant Singh and Basant Singh, co-accused of the petitioner, who were initially, declared as proclaimed offenders are not staying away from the process of law as they have filed their respective SLPs in the Hon"ble Supreme Court in which they have been granted the relief of stay of the operation of the summoning order.

6. In view of the above, this Court is of the considered view that further confinement of the petitioner behind the bars is not likely to serve any useful purpose. Resultantly, the petition is accepted. Bail to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Sirsa.