

CRM-M-28802-2015 (O&M)

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

CRM-M-28802-2015 (O&M)

Date of Decision: September 24, 2015

Dharaminder

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

- 1. *Whether Reporters of local papers may be allowed to see the judgment ?***
- 2. *To be referred to the Reporters or not ?***
- 3. *Whether the judgment should be reported in the Digest?***

Present: Mr.S.S.Sahu, Advocate
for the petitioner.

Mr.Sanjay Kumar, AAG, Haryana.

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NARESH KUMAR SANGHI, J.(ORAL)

Prayer in this petition, filed under Section 439, Cr.P.C., is for grant of regular bail to the petitioner, Dharaminder, son of Ram Kumar, resident of village Leelas, Tehsil Siwani, District Bhiwani, who has been booked for having committed the offences punishable under Sections 120-B and 302 read with Section 34, IPC, in a case arising out of FIR No.325, dated 26.07.2014, registered at Police Station, Bhuna, Tehsil and

District Fatehabad.

Learned counsel contends that as per prosecution case Vinod Kumar is the deceased; Uggarsain is an eye-witness of the occurrence in which Vinod Kumar was crushed to death by means of Bolero vehicle being driven by Sushil; Vinod Kumar before his death suffered oral dying declaration before Partap Singh PW that the offending vehicle was being driven by Sushil Kumar; neither Vinod Kumar (since deceased) nor Uggarsain in their respective statements disclosed that the petitioner was driving the vehicle or even his presence was not disclosed at the spot; during investigation, Rakesh, co-accused of the petitioner disclosed that the petitioner was driving the Bolero vehicle at the time of the occurrence and the said confessional statement cannot be considered to be a legal evidence to connect the petitioner with the alleged offences.

Learned counsel for the State on instructions from ASI Jaivir Singh, Police Station, Bhuna, District Fatehabad, and after going through the police file brought by the police official, very fairly concedes that neither Vinod Kumar (since deceased) in his oral dying declaration nor Uggarsain, an eyewitness of the occurrence, in his statement before police, disclosed with regard to presence of petitioner Dharaminder at the spot. He

further submits that the deposition of Uggarsain has been recorded and he has not disclosed before the Court that the petitioner was amongst the assailants.

In view of the totality of the facts and circumstances of the case, this Court is of the considered opinion that veracity of the disclosure statement of co-accused Rakesh implicating the petitioner would be a moot point during trial; during his oral dying declaration, Vinod Kumar (since deceased) as also in his statement Uggarsain, an eyewitness, have failed to show the presence of the petitioner at the spot. Therefore, the present petition is allowed. The petitioner, Dharaminder, son of Shri Ram Kumar, resident of village Leelas, Tehsil Siwani, District Bhiwani, is directed to be released on bail during pendency of the trial of the present case subject to his furnishing bonds in the sum of ₹1,00,000/- (Rupees one lac only) with two sureties of the like amount, to the satisfaction of learned Chief Judicial Magistrate/ Duty Magistrate, Fatehabad.

September 24, 2015
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(NARESH KUMAR SANGHI)
JUDGE