

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

**CRM-M-44091 of 2014  
Date of decision : 11.05.2015**

**Islam**

..... Petitioner

*Versus*

**State of Haryana**

... Respondent

**CORAM:- HON'BLE MR. JUSTICE DARSHAN SINGH**

1. Whether Reporters of the 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. Sarfraj Hussain, Advocate for petitioner.  
                  Mr. Anmol Malik, AAG, Haryana.  
                  Mr. Davinder Bir Singh, Advocate for complainant.

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**DARSHAN SINGH, J.**

This petition has been filed for grant of regular bail by accused-petitioner Islam in case FIR No.127 dated 9.3.2012 under Section 302, 201 read with Section 34 of the Indian Penal Code, 1860 (hereinafter called IPC), Police Station Nuh, Distt. Mewat.

2.             As per the prosecution allegations, on 08.03.2012, Talim the son of complainant Liaqat had gone missing at about 11:00 A.M. The matter was reported to the police. The dead body of Talim was recovered

from the wheat field of Zahir son of Rafiq and on whose neck all around, there was blue sign and under the chest there were marks of abrasion. The blood had oozed out from his ear and mouth. His shirt was also missing. The complainant expressed doubt that co-accused/non-applicant Ashroo, Roojdar, Sakil and Rahul had murdered his son due to party fraction in the village. During the investigation, the present petitioner and his co-accused were arrested on 31.12.2013. Since then he is in custody. His application for grant of regular bail has been dismissed by the learned Additional Sessions Judge Mewat at Nuh. Hence this petition.

3. Learned counsel for the petitioner contended that the name of the petitioner was not mentioned in the FIR. He contended that the petitioner has been falsely implicated in this case. The case was thoroughly investigated by the Special Investigating Team constituted by the Superintendent of Police, Mewat. The petitioner was found innocent and cancellation report was filed. The SIT has also got conducted the polygraph test by Forensic Science Laboratory, Madhuban, in which the petitioner was found innocent but the complainant filed a petition before this Court in which the directions were given to the respondent-State for conducting the inquiry afresh. The Superintendent of Police, State Crime Branch in collusion with the complainant and due to political pressure has falsely implicated the petitioner.

4. He further contended that the entire case of the prosecution is based on the statement of PW Phulli, the alleged witness of the last

scene. He contended that occurrence had taken place on 08.03.2012. His first statement was also recorded by the police on 29.10.2013 i.e. after more than one year and seven months. The cause of death is also hanging. There was no other injury on the person of the deceased. The petitioner is in custody for the last about one and half year. The conclusion of trial will take long time. So, the petitioner is entitled for concession of bail.

5. On the other hand, Mr. Anmol Malik, learned Assistant Advocate General for the State of Haryana assisted by Mr. Davinder Bir Singh, Advocate for the complainant contended that the offence is of serious nature. A child of 11 years has been murdered. They contended that there was absolutely no reason for such a small child to commit suicide. It is a clear case of murder. They further contended that from the circumstances, the possibility of suicide is totally ruled out. They contended that no ligature material was found around the neck of the deceased. The dead body was found lying in the field. If it would have been a case of suicide, the ligature would have been present around the neck of the deceased and his dead body might have been hanging with some object. They further contended that there were some other injuries also on the person of the deceased. They further contended that the present petitioner was last seen in the company of the deceased along with his co-accused, which is a strong evidence. They further contended that the previous Investigating Officer was not conducting the investigation honestly. The complainant has to knock the door of this

Court. Thereafter, the investigation was handed over to the Crime Branch. PW Phulli was beaten by the previous Investigating Officer and was asked to withdraw his allegations. He has even filed a complaint against Rattan Lal Inspector, CIA Staff Nuh and other police officials for this atrocity. Thus, they contended that the delay in recording the statement of Phulli, the witness of last seen, is fully explained. They further contended that 10 witnesses have already been recorded. The trial is to conclude soon. So, no case is made out for grant of bail.

6. I have duly considered the aforesaid contentions.

7. It is settled principle of law that at the stage of deciding the bail application, the Court is not required to minutely examine the evidence brought on record as it may cause prejudice to either of the parties at the subsequent stage. While deciding the bail application, the Court is only to consider the material on record to find out the broad allegations. The present petitioner was last seen in the company of the deceased along with his co-accused. Learned State counsel has raised various issues to challenge the theory of suicide, which are certainly required to be looked into at the appropriate stage on appreciation of the evidence.

8. The delay in recording the statement of Phulli, the star witness of the prosecution with respect to the last seen, is also a matter to be taken into consideration by the learned trial Court at the appropriate stage while appreciating the evidentiary value of his testimony. Mere this fact that earlier the police had prepared the cancellation report and

thereafter, due to filing of the petition before this Court by the complainant, the petitioner along with his co-accused has been booked by the Crime Branch is also no ground at this stage to make the petitioner entitled for the grant of bail.

9. The omission of the name of the petitioner in the FIR is also to be appreciated by the learned trial Court on the merits of the case while judging the worth/reliability of the prosecution evidence.

10. It is a case where a child of 11 years had met with a tragic death. So, it is a grave offence. The prosecution has relied upon the last seen evidence against the present petitioner. Thus, the petitioner has not been able to make out a case for grant of bail. The period of custody of the petitioner in jail during the trial of the case is also no ground to grant him the concession of bail in view of the gravity of the offence.

Thus, keeping in view my aforesaid discussion, the present petition has no merits and the same is hereby dismissed.

**11.05.2014***sunil yadav***(DARSHAN SINGH)  
JUDGE**