

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

***CRM No.M-38865 of 2015 (O&M)  
Date of Decision: 28.01.2016***

Lakhan & another

... Petitioners

Versus

State of Haryana

... Respondent

**CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.**

Present:- Mr. R.S. Cheema, Senior Advocate with  
Mr. R.K. Trikha, Advocate for the petitioners.

Mr. Deepak K. Grewal, DAG, Haryana.

Mr. Deepender Singh, Advocate for the complainant.

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**TEJINDER SINGH DHINDSA.J.**

Petitioners seek benefit of regular bail pending trial in case FIR No.310 dated 26.06.2015, under Section 365 IPC (Sections 302/201 IPC read with Section 34 IPC added later on), registered at Police Station Badshahpur, District Gurgaon.

2. FIR in question was registered on 26.06.2015 initially under Section 365 IPC on the basis of statement of Sat Parkash with the allegation that his son, namely, Shekhar had gone out of the house on 21.06.2015 during late night hours on account of a power cut in the village and had not returned back.

3. The supplementary statement of complainant Sat Parkash was recorded on 06.07.2015 in which he had stated that after 2/3 days of the registration of the FIR, when the Investigating Agency had asked him if he suspected anyone then he had stated that about two months back, Chavan

Kumar, Pawan Kumar and their father Lal Chand residents of the same

village had come to his house and revealed about an affair going on between his son Shekhar and their daughter as also about a mobile phone having been given by Shekhar to their daughter. In his supplementary statement, Sat Parkash revealed that he had been threatened that if his son Shekhar did not mend his ways or if he tries to meet the daughter of Chavan, Shekhar would be killed.

4. As per prosecution, it is on the demarcation of Pawan and Chavan, the dead body of Shekhar was retrieved from a pit near the cremation ground of the village. Pawan and Chavan co-accused were arrested on 06.07.2015. Disclosure statement of Chavan was recorded on 06.07.2015 itself and in which he stated that Shekhar had been calling and speaking to his daughter Anjali on the mobile phone for the last 2/3 months. On 21.06.2015, the daughter had returned home in the late hours and upon being confronted, she had stated that she was with Shekhar. Upon being infuriated, Chavan and his brother Pawan are stated to have lifted Shekhar at about 11 P.M. from his house and taken him in an Alto car to the fields. Chavan in his disclosure statement stated that out of anger, he had put a towel cloth around the neck of Shekhar whereas his brother Pawan had caught hold by both his hands and Shekhar was strangulated. As per disclosure statement, both the accused i.e. Chavan and Pawan brought the body of Shekhar near the cremation ground of the village and thereafter Chavan had proceeded to bring a JCB machine and by digging the pit, the body of Shekhar was buried. The disclosure statement of co-accused Pawan recorded on 06.07.2015 is also on identical lines.

5. Apparently, a second disclosure statement of Chavan was recorded on 09.07.2015 implicating the present petitioners. Suffice it to note

that Chavan and Pawan are the real uncles (chachas) of the present petitioners. In his second disclosure statement, Chavan had stated that when he along with his brother Pawan were digging the pit near the cremation ground then both his nephews i.e. the present petitioners had come on the spot and had helped in burying the dead body of Shekhar. On similar lines, the second disclosure statement of co-accused Pawan was recorded on 09.07.2015.

6. On the basis of such supplementary statements of co-accused Chavan and Pawan that the present petitioners were arrested on 09.07.2015.

7. The prosecution is relying on the confessional statements made by the present petitioners on 09.07.2015 and which were to the effect that their uncles Pawan and Chavan had asked them to bring Shekhar and which they had done by making Shekhar sit in an Alto car. Thereafter both the uncles i.e. Chavan and Pawan had sat on the rear seat with Shekhar in the middle and after proceeding towards Balaji Mandir, the present petitioners are stated to have heard a sound from the rear side of the car whereupon both of them saw that their uncles Pawan and Chavan were scuffling with Shekhar. Present petitioners in their confessional statements also stated that they had seen a white cloth tied around the neck of Shekhar. Thereafter Chavan had alighted from the car and had brought a JCB machine and Pawan had asked the present petitioners to go back to the house.

8. The petitioners have been in custody since 09.07.2015. It has gone uncontroverted that apart from the disclosure statements made by co-accused Chavan and Pawan as also the confessional statements of the petitioners themselves, there is no other incriminating evidence against them. Even as per final report under Section 173 Cr.P.C., the present

petitioners are sought to be implicated by stating that on 09.07.2015 disclosure statements of co-accused Pawan and Chavan were recorded separately and as per such statements, accused, Aman and Lakhan (present petitioners) were arrested and their disclosure statements were also recorded. As per final report, the present petitioners had brought Shekhar in an Alto car from his house.

9. It is a case of circumstantial evidence. Three different versions are sought to be projected by the prosecution i.e. firstly on the disclosure statements of Pawan and Chavan recorded initially on 06.07.2015, secondly, on the basis of supplementary statements of Chavan and Pawan recorded on 09.07.2015 and the confessional statements of the petitioners themselves. The motive that has been attributed is with regard to deceased Shekhar having an affair with a girl named Anjali i.e. daughter of Chavan, co-accused.

10. The trial is still stated to be at the very initial stage. It is not the case made out on behalf of the State that if the petitioners were to be granted benefit of regular bail, they would be in a position to hamper the course of trial.

11. Without making any observations on merit, present petition is allowed. Petitioners be enlarged on bail subject to satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Gurgaon.

Disposed of.

**28.01.2016**

*harjeet*

**(TEJINDER SINGH DHINDSA)  
JUDGE**