

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

**CRM NO. M-26881 OF 2017
DECIDED ON : 06.12.2017**

Rohit Kumar alias Maddi

...Petitioner

versus

State of Haryana

...Respondent

AND

CRM NO. M-26947 OF 2017

Priyanka Batra @ Priya

...Petitioner

versus

State of Haryana

...Respondent

AND

CRM NO. M-29995 OF 2017

Shyam Sunder alias Sonu

...Petitioner

versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present : Mr. R. S. Cheema, Senior Advocate with
Mr. R. K. Trikha, Advocate,
for the petitioner in
CRM No. M-26881 of 2017.

Mr. Bipan Ghai, Senior Advocate with
Mr. Deepanshu Mehta, Advocate,
for the petitioner in
CRM No. M-26947 of 2017.

Mr. Gaurav Singla, Advocate,
for the petitioner in
CRM No. M-29995 of 2017.

Mr. Vikas Malik, DAG, Haryana.

Mr. J. S. Bedi, Senior Advocate with
Mr. S. S. Brar, Advocate,
for the complainant.

ANUPINDER SINGH GREWAL, J. (ORAL)

These three petitions for regular bail are being decided by a common order as they arise out of FIR No.637 dated 21.09.2016 under Sections 302/506/120-B/201/404/203 of the Indian Penal Code, at Police Station City Jagadhari, District Yamuna Nagar.

The FIR was registered on the statement of complainant Subhash Chander Batra, father of deceased Yogesh Batra, stating therein that he received information that on the night intervening 27/28th of May, 2016, Yogesh Batra had died. He reached Yamuna Nagar on 28.05.2016 at 7.30/8.00 PM. Priyanka Batra (hereinafter referred to as "A-1")-wife of deceased Yogesh Batra, told the complainant that Yogesh Batra had died due to silent attack and they had taken the deceased to hospital where he was declared brought dead. The last rites of Yogesh Batra were performed on 29.05.2016. The complainant and his wife started living in the house and with the passage of time, they noticed that A-1 had started living lavish life and when the complainant tried to make her understand that her husband had recently passed away, A-1 did not bother and started giving filthy abuses to them. The complainant then saw A-1 meeting Rohit Kumar @ Maddi (hereinafter referred to as "A-2") and he

also heard A-1 telling A-2 that they have eliminated Yogesh Batra and now A-1 will transfer all his property in her name and thereafter they will marry each other. The complainant approached the police and narrated the entire incident but no action was taken by the police. Thereafter the complainant made enquiry on his own and got to know the mobile record and location of mobile phones of A-1 and A-2. He further came to know that mobile location of both A-1 and A-2 on the night intervening of 27/28th of May, 2016, was of the house of deceased Yogesh Batra and they had committed the murder of his son Yogesh Batra. The complainant approached the Superintendent of Police, Yamuna Nagar, stating that sometime in January, 2016, Yogesh Batra had confided in him that A-1 was having illicit relations with A-2 for quite some time and he was visiting his house in his absence. He had also disclosed that he caught A-1 and A-2 red handed in a compromising position and asked them to break their relationship otherwise he will be forced to take legal action against them. Both A-1 and A-2 assured him that they will not have any contact with each other. Thereafter, the behaviour of A-1 remained cordial with the deceased but after sometime, A-1 started quarreling with him on petty issues and openly threatened him that she will commit suicide and will implicate him in a false criminal case in case he would disclose the illicit relationship of A-1 and A-2 to anyone.

The case was initially investigated by Jagadhari Police and later on the investigation was transferred to Karnal Police.

Learned senior counsel for the petitioner(s) have contended that there is a delay of about four months in registering the FIR. The complainant received information about the death of his son in the morning on 28.05.2017 and he had arrived in the evening. The body was cremated the next day and therefore, the body remained in the house where the complainant was present for the whole night. In case he was aware of the illicit relations between A-1 and A-2 since January, 2016, as mentioned in the FIR, he would have been certainly suspicious and at least sought a post-mortem examination before the body was cremated in his presence. He also contends that as the body was cremated without post-mortem, it cannot be established that the death had taken place on account of homicide. The cremation was attended by the parents of the deceased, other relatives and friends. He has referred to the statements of Rajesh Trehan and others recorded by the police that the deceased was taken to hospital but the body was sent back as it was declared by the doctors to have been brought dead. He also contends that prosecution is trying to establish its case on the extra-judicial confession of A-2 before Surinder Kumar on 21.03.2017 although statement of Surinder Kumar had been recorded by the police on 22.09.2016 wherein he had stated that he was a close friend of deceased Yogesh Batra who had confided in him about the illicit relations between A-1 and A-2. He along with the deceased had approached A-2 in that regard. Therefore, Surinder Kumar, being a confidant of the complainant, there was no occasion for A-2 to

make extra-judicial confession before him especially when the police investigation had already started in this regard and A-2 had been to the police station number of times.

Learned counsel have also contended that after the registration of FIR, the complainant had also filed a civil suit for injunction against A-1 on 07.12.2016 with regard to ownership of the management of family concern which was in the business of manufacturing plywood. An extra ordinary general body meeting had also been requisitioned for changes in the Board of Directors.

Learned counsel also contended that prosecution is relying upon the details of phone calls alleged to have been made between A-1 and A-2, but these phone numbers were not in the name of A-1 and A-2 and it has not yet been established that they were used by them. The persons in whose names the numbers had been obtained, have either not been traced or cited as witness in the challan. It is also contended that an application for Lie Detection Test of both A-1 and A-2 was moved and both of them had agreed to it, but the test was not conducted by the prosecution.

Learned State counsel, as well as, learned senior counsel appearing on behalf of the complainant have contended that there is a plausible explanation in the delay for lodging the FIR, inasmuch as although the complainant was aware of the fact that his daughter-in-law (A-1) was in extra-marital relationship with A-2, but there was no reason for him to suspect at the time of death of his son that he would have been murdered by her. It

is also contended that the behaviour of A-1 after the death of her husband was somewhat unnatural. The complainant after having found her to be in constant touch with A-2 through mobile phone, as well as, after acquiring knowledge of the presence of A-1 and A-2 in a discotheque in Chandigarh barely after two months of the occurrence, had a strong suspicion that his son had been murdered by A-1 and A-2.

Learned counsel have also contended that the call details of the mobile phones being used by A-1 and A-2 revealed that on the night intervening 27/28th of May, 2016, number of phone calls were made between the two, which would be an incriminating factor indicating the culpability of A-1 and A-2.

Learned counsel further contended that Shyam Sunder (hereinafter referred to as "A-3"), was the one who had allegedly arranged the syringes and sedative which were sought to be administered to the deceased. Learned counsel also contended that the petitioners were suspects till 12.10.2016 whereafter the statements which may be allegedly in favour of the accused, were recorded by the police and thereafter investigation was transferred to Karnal police on 20.12.2016.

I have heard learned counsel for the parties.

The incident is alleged to have taken place on the night intervening 27/28th of May, 2016 and the FIR was registered on the statement of complainant made on 14.09.2016. There is a delay of nearly three and a half months in lodging the FIR. It is not a case where the body of deceased was cremated

hurriedly or in the absence of the complainant. The complainant had arrived at the residence of the deceased in the evening and the body was cremated on the next morning. No post-mortem was conducted. If the complainant was suspicious and had knowledge about the illicit relations between A-1 and A-2, then he could have asked for the post-mortem examination.

It also deserves to be noticed that A-1 had immediately started living with A-2 after the incident and after lodging the complaint and the FIR, he filed a civil suit for injunction with regard to the management of the family concern on 07.12.2016.

Further, the extra-judicial confession has been made by A-2 before Surinder Kumar, who had stated before the police six months earlier that A-1 and A-2 were in illicit relationship. As to what is the credibility of this extra-judicial confession, is a matter which would be gone into in course of the trial.

Much emphasis has been led on the call details between A-1 and A-2, but it has not been established as to whether the phone calls were made from the numbers which were owned by A-1 and A-2. There is also doubt with regard to the persons in whose names the phone numbers had been obtained as some of them have not been traced while others have not been cited as witness in the challan. The accused had been appearing before the Investigating Officer right from the early stages of the investigation from October, 2016. It is mentioned in the report of the first investigation which is part of

the challan that no evidence had come up to arrest the accused. It is not the case of prosecution that they had not appeared before the investigation, as and when called upon to do so or had made an attempt to flee from justice or tamper with the evidence.

A-1 is stated to be in custody since 22.03.2017. A-2 is stated to be in custody since 21.03.2017 while A-3 is stated to be in custody since 24.03.2017. The trial is at its initial stage and its conclusion is likely to take some time. Therefore, I am of the considered view that all the three petitioners are entitled to regular bail.

Consequently, all these three petitions are allowed. All the petitioners namely Rohit Kumar @ Maddi, Priyanka Batra @ Priya and Shyam Sunder @ Sonu are ordered to be released on regular bail subject to their furnishing adequate bonds to the satisfaction of trial Court/Duty Magistrate.

However, nothing which has been observed herein, shall be construed to be an expression of opinion on the merits of the case.

(ANUPINDER SINGH GREWAL)
JUDGE

DECEMBER 06, 2017
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| 1. | Whether speaking/reasoned : | YES/NO |
| 2. | Whether reportable : | YES/NO |