

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

CRM-M-34815-2017

Date of decision:-20.2.2018

Pawan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rakesh Nehra, Advocate
for the petitioner.

Mr.Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

This petition for regular bail has been filed by petitioner –
Pawan – an accused in FIR No.172 dated 1.5.2017, under Sections 302,
201, 34 IPC, registered at Police Station Sadar, Rohtak.

Briefly stated, facts of the case as per prosecution story are
that FIR in question was lodged by the complainant – Jage Ram son of
Bharat Singh, resident of Bhaloth, District Rohtak aged about 76 years,

Ex.-Servicemen and an agriculturist by avocation, who *inter alia* in the statement made to the police, which formed basis for registration of FIR, stated that on 1.5.2017 at about 8 O'clock when he went to his agricultural land, he found dead body of a young boy of approximately 30-35 years lying there having multiple injuries on face and two bricks were found lying near the body, which were blood stained; that he accordingly informed the police. After recording of formal FIR, the matter was investigated, during the course of which, Sh.Sukhbir son of Umeed Singh father of deceased made a statement to the police that on 30.4.2017 his son Naveen aged about 29 years unmarried had left home in company of Pawan son of Rajesh, Manoj son of Rajinder, Vicky son of Jai Bhagwan and Nikhil son of Parveen, who had come to their house in a Safari vehicle of Pawan; that all five of them had left at 9:30 a.m.; that in the evening when complainant along with his brother Harpal was returning home, he saw the Safari vehicle of Pawan passing nearby in the area of Pohar canal bridge; that Naveen and his friends were sitting there; that on the next day, they came to know that dead body of a boy had been recovered, which had been placed in the mortuary of PGIMS, Rohtak, as such, they went there and found that dead body was of Naveen. He suspected that Pawan, Nikhil, Vicky and Manoj had committed murder of his son Naveen. As such, Nikhil was arrested in this case and during the course of interrogation, he suffered a disclosure statement that on 30.4.2017, he along with Vicky, Pawan, Manoj and Naveen was having liquor since morning in Tata Safari vehicle of Pawan and were roaming around in the city; that in the evening, they took a bottle of McDowell

liquor from the liquor vend and went to room of Pawan, where they again took liquor; that at about 9/9:30 p.m. all of them went to Rohila Hotel in Sector-2 in Safari vehicle, where they purchased snacks etc. and started drinking; that there he had scuffle with Naveen but their other friends pacified them, however, he nursed a grudge to take revenge from Naveen and at about 10:30/11:00 p.m., they went to Aasan minor on Bhalot Kilo road, parked the Safari vehicle in between the side track and started taking liquor on the road; that during that Naveen had a scuffle with him and when Vicky, Pawan and Manoj tried to pacify, then Naveen abused them and tried to manhandled them; that then they pushed Naveen into the fields adjacent to the track near minor; that Vicky, Pawan and Manoj caught hold of Naveen from his arms and legs and pulled him down and then he (Nikhil) sat on the chest of Naveen and gave a brick blow on his face; that thereafter Vicky took the same brick and again hit Naveen on face, resultantly Naveen died; that during the scuffle, mobile phone of Naveen had fallen down, which he had picked up and that thereafter they ran away from the spot. In pursuance of such disclosure statement, such accused demarcated the place of incident. Remaining accused were also arrested in this case.

The petitioner-accused had filed an application for regular bail in the Court of Sessions, which was declined by learned Additional Sessions Judge, Rohtak vide order dated 3.8.2017, as such, he has approached this Court with same request.

Notice of the petition was given to respondent – State and counsel representing the State has put in appearance.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner submits that the petitioner is not named in the FIR and his name had cropped up in the disclosure statement of co-accused Nikhil, which is inadmissible in evidence and there is no evidence to connect the petitioner with the incident; that the conclusion of trial is likely to take some time, as such, the petitioner be granted regular bail. In support of his contention, he has referred to authority Arup Bhuyan Versus State of Assam, 2011(1) R.C.R.(Criminal) 882 by the Apex Court wherein it was observed that confession is a very weak kind of evidence. The wide spread and rampant practice in the police of India, is to use third degree methods for extracting confessions from the alleged accused.

Learned State counsel while opposing the request has submitted that no eye-witness of the incident is available, however, the case of prosecution is based upon circumstantial evidence including statement of Sh.Sukhbir father of the deceased, who had provided the last seen evidence. In addition to that call details of the accused collected during the investigation show that all of them were together at the relevant time and further the Safari vehicle used in the incident belong to the petitioner and a specific role has been attributed to him that he along with two other accused catching hold of Naveen from arms and legs pulled him down and then Nikhil sat on the chest of Naveen and gave a brick blow on his face and thereafter Vicky took the same brick and again hit Naveen on face. Therefore, the petitioner is not entitled to bail. He has

further argued that there are chances of the petitioner tampering with the prosecution evidence by giving threats and intimidation to the prosecution witnesses and even absconding during the trial, if granted bail.

After hearing the rival contentions of learned counsel for the parties, I find that no case for grant of regular bail to the petitioner is made out. As regards name of the petitioner not figuring in the FIR, as per settled law, FIR is not an encyclopedia and may not contain the minute details of the incident. The purpose of lodging FIR is to set the criminal machinery in motion. It is only during investigation, after registration of the FIR that the investigating agency probe the matter and find out as to how the offence was committed and by whom. Therefore, the petitioner cannot take advantage of this fact.

As regards, accused Nikhil naming him and other co-accused and giving the manner in which Naveen was murdered, the same can certainly be looked into to provide lead in the investigation. Even otherwise, Section 30 of the Evidence Act provides that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other persons as well as against the person who makes such confession.

The case of the prosecution is not solely based upon such disclosure statement of accused Nikhil but also on other evidence including the last seen evidence provided by Sukhbir, father of the deceased. If deceased Naveen was last seen in company of petitioner and

other accused shortly before his violent death, it is for them to explain as to under what circumstances, the incident had happened. Furthermore, the Safari vehicle said to have been used in the incident belong to Pawan. As stated by the State counsel, the call details so collected during the investigation also corroborates the prosecution story. With respect to the authority referred by by learned counsel for the petitioner, the same is not applicable due to different facts and circumstances and the context in which such observations had been made. The apprehension expressed by the State counsel that if petitioner is granted bail, there is every likelihood of his absconding and even tampering with the prosecution evidence cannot be brushed aside lightly. The guilt of the accused shall be determined during the trial. Therefore, I do not find any reason to allow the petition.

Thus, finding no merit in the petition, the same stands dismissed.

20.2.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No