

**CRM-M-26467-2018 and
CRM-M-26469-2018**

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

Date of Decision: 10.05.2019

1. CRM-M-26467-2018

Dilbhag

... Petitioner

Versus

State of Haryana and another

... Respondents

AND

2. CRM-M-26469-2018

Dilbhag

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Naveen Gupta, Advocate and
Mr. Kshitij Bharti, Advocate,
for the petitioner(s) in both the petitions.

Mr. Sharad Kumar Yadav, DAG, Haryana.

Mr. Jitender Dhanda, Advocate,
for respondent No.2 in both the petitions.

INDERJIT SINGH, J.

This order shall dispose of both the above mentioned petitions

filed by petitioner-Dilbhag under Section 439 (2) read with Section 482

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Cr.P.C. for cancellation/setting aside the orders dated 05.04.2018 (in CRM-M-26467-2018) and 26.03.2018 (in CRM-M-26469-2018) passed by learned Additional Sessions Judge, Hisar, whereby Shiv Kumar @ Foji (respondent No.2 in CRM-M-26467-2018) and Rakesh @ Tonu (respondent No.2 in CRM-M-26469-2018) have been granted regular bail, respectively, in FIR No.262 dated 20.09.2017, registered at Police Station Adampur, under Sections 302, 201, 148, 149 and 120-B of the IPC (Section 34 of the IPC added and Sections 148 and 149 of the IPC deleted while filing challan).

Notice of motion was issued in both these petitions.

Learned State counsel put in appearance on behalf of respondent-State.

Learned counsel for respondent No.2 has also appeared and contested both the petitions.

I have heard learned counsel for the parties and gone through the record.

Since both the petitions have emerged out of the same FIR, therefore, for the facility of reference, the facts as noted down by learned Additional Sessions Judge, Hisar, while passing the order dated 26.03.2018 challenged in CRM-M-26469-2018, read as follows:

“2. As per prosecution, on 20.09.2017, complainant Dilbag submitted application in the police station. In application, it was stated that they are two brothers and four sisters. His youngest brother Vikram on 11.09.2017 after

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receiving telephonic call took meals and went away on black colour Bajaj Platina motor-cycle HR 32-6104 at about 1 p.m. Thereafter, he made telephonic call at 4.30 p.m. but somebody took up his telephone and said that phone is on charging, after coming of Vikram he will get his conversation. In evening, he made telephone calls and found telephone as switched 'off'. He searched for his brother here and there. On 17.09.2017, he had gone to Adampur and came to know that his brother Vikram has been called by Shiv Kumar son of Balraj, his mother Kalo wife of Balraj, resident of Indira Colony, Mandi Adampur, Hisar. He again went to village on 18.09.2017 and required from respectable persons namely Ishwar Singh son of Chatar Singh Ex. Sarpanch, Jogender son of Lalu Ram, Kuldeep son of Birbhan and Raju son of Sube Singh and took them to Indira Colony to house of Shiv Kumar. Azad son of Zile Singh, Shiv Kumar son of Balraj, Kalo wife of Balraj, Jyoti daughter of Balraj and brother-in-law of Shiv Kumar were present. When he asked about his brother from them, they replied that their boy has gone and their daughter has gone. The issue should be forgotten. He asked about Vikram several times but they said that they should forget about their boy. He is confident that his brother has been killed by Shiv Kumar as Fouji son of Balraj, Kalo wife of Balraj, Jyoti daughter of Balraj and brother-in-law of Shiv Kumar and Azad son of Zile Singh and have

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concealed dead body of his brother. On the basis of application, FIR was registered. On 20.09.2017, accused Shiv Kumar @ Fouji was arrested. His confessional statement was recorded. He demarcated place of occurrence. An unknown dead body was recovered which was identified by Dilbag to be dead body of his brother Vikram. Inquest proceedings were carried out. On 22.09.2017, accused Shiv Kuamr and Rakesh @ Tonu got recovered Platina motor-cycle of Vikram from Main Branch Pool Kumharia and told about place of burning pillow, Chunni, bedding and Vikram's mobile and pouch of sulfas by demarcating place near road from Kumharia to Sabarwas. Accused Rakesh @ Tonu got recovered Tata Magic. Unknown dead body of woman was identified by Shiv Kumar to be of Babli daughter of Balraj. On 23.09.2017, accused Kalawati wife of Balraj and Pooja wife of Rakesh @ Tonu were arrested. They made confessional statements. On completion of investigation, challan/final report under Section 173 Cr.P.C. was filed against accused Shiv Kumar @ Foji, Rakesh @ Tonu, Pooja wife of Rakesh and Kalawati @ Kalo. Azad and Bhajan Lal were not challaned.”

Learned counsel for the petitioner(s) argued that it is a double murder honour killing case. The trial Court, without looking into the nature and gravity of the offences; without discussing the fact that by grant of bail

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giving any cogent reasons, has granted the bail to Shiv Kumar @ Foji and Rakesh @ Tonu (respondent No.2 in both the petitions, respectively). He further contended that Shiv Kumar @ Foji and Rakesh @ Tonu have been granted bail illegally and without giving any reason by the trial Court.

On the other hand, learned counsel for respondent No.2 submitted that there is no cogent evidence against Shiv Kumar @ Foji and Rakesh @ Tonu and the trial Court has rightly granted the benefit of bail to them. There was no cogent evidence against them and they have been falsely implicated.

I have gone through the impugned orders.

After hearing learned counsel for the parties and going through the record, I find that the trial Court has passed the impugned orders simply on the grounds that there is a delay of 09 days in lodging the FIR and out of six accused, two were found innocent during investigation and co-accused, Pooja and Kalwati, are on bail and trial is likely to take a long time.

Perusal of record, itself, shows that the trial Court has not applied its mind. The trial Court has nowhere discussed the nature and gravity of the offence. It has also not been discussed as to whether there is any apprehension or not that the accused, if released on bail, will tamper with the evidence. The trial Court has neither considered the custody period nor stage of the case. It is a double murder case of honour killing of two young persons by the family members of the girl. Shiv Kumar is real brother of deceased girl. As per the prosecution version, they were killed

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which have been recovered from the area of Rajasthan. One of the dead bodies has been duly identified even by accused-Shiv Kumar as of his sister. The motor-cycle has been recovered from the canal. The place of occurrence has also been identified by the accused. None of these facts has been considered by the trial Court. The FIR is of 20.09.2017 and bail was granted on 26.03.2018 and 05.04.2018, receptively, without giving any reason in such type of heinous crime. The bail was granted for the reasons best known to the trial court.

Therefore, in such circumstances, I find that the impugned orders dated 05.04.2018 and 26.03.2018 passed by the learned Additional Sessions Judge, Hisar, on the face of the same, are liable to be set aside. Finding merits in the both these petitions, the same are allowed. The regular bail granted to Shiv Kumar @ Foji (respondent No.2 in CRM-M-26467-2018) and Rakesh @ Tonu (respondent No.2 in CRM-M-26469-2018), respectively, is cancelled. They are directed to surrender before the trial Court immediately. If they do not surrender before the trial Court immediately, the trial Court shall issue non-bailable warrants against them and take them in custody.

10.05.2019

parveen kumar

**(INDERJIT SINGH)
JUDGE**

Note:	Whether speaking/reasoned	:	Yes
	Whether reportable	:	No