

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

**CRM-M No.12611 of 2020 (O&M)
Date of Decision: 27.11.2020**

Amar Singh

.....Petitioner

Vs

State of Haryana

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Manoj Kaushik, Advocate
for the petitioner.

Mr. Manish Bansal, D.A.G., Haryana.

Mr. Vikas Kumar, Advocate
for the complainant.

RAJ MOHAN SINGH, J.

The case was taken up for hearing through video conferencing.

CRM Nos.13558 & 28330 of 2020

[1]. Prayer made in both the applications is for placing on record documents/disclosure statements of the petitioner and co-accused Pardeep and Waseem.

For the reasons mentioned in the applications, the same are allowed, subject to all just exceptions. The

accompanying documents are taken on record.

Main case

[2]. Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.250 dated 30.08.2019, registered under Sections 363, 366-A IPC (Sections 302, 201, 120-B IPC added later on) at Police Station Kheri Pul, Faridabad.

[3]. The FIR was registered on the statement of Ajab Singh that his daughter had gone to purchase some articles/goods from the nearby grocery shop, but thereafter she did not return back home. The FIR was registered against unknown persons, who might have taken away daughter of the complainant Nikita with an intention to marry her.

[4]. Learned counsel for the petitioner submitted that the petitioner has been implicated on the basis of extra-judicial confession made before PW-3 Kuldeep Singh and two confessional statements made by the petitioner which are not admissible under Section 27 of the Evidence Act. The petitioner is alleged to be an accused of offence under Sections 201 and 120-B IPC. Three material witnesses namely Ajab Singh, Suvinder Singh and Kuldeep Singh have already been examined. Extra-judicial confession is a weak type of evidence and cannot be relied against the petitioner even in view of

statement of PW-3 Kuldeep Singh.

[5]. Per contra, learned State counsel duly assisted by learned counsel for the complainant submitted that daughter of the complainant Nikita was kidnapped by some unknown persons. During investigation accused Pardeep Kumar and Waseem were arrested on 10.09.2019. Dead body of Nikita was recovered from the bank of Yamuna river near Kaptan Farm House. On 12.09.2019, the petitioner was arrested, who got the place demarcated. The place from where *kassi* was purchased was also demarcated. Car and mobile phone were recovered. It was only at the instance of the petitioner, Nikita was murdered by Pardeep Kumar and her dead body was put in a pit at the bank of Yamuna in an effort to destroy the evidence.

[6]. Learned State counsel further submitted that the role of the petitioner is under Section 120-B IPC for the substantive offence of Section 302 IPC read with Section 201 IPC. Charges have been framed for the offence under Sections 120-B, 363, 366-A, 302, 201 IPC read with Section 120-B IPC.

[7]. Learned counsel for the complainant submitted that criminal conspiracy is also an *act/actus reus* which involves *mens rea* i.e. mental state. All conspirators are liable for crimes committed in furtherance of the conspiracy by any member of the group. In the present case, the petitioner suggested

Pardeep to kill Nikita and, therefore, he was an active conspirator, who committed an offence under Section 302 read with Section 120-B IPC. By concealing the dead body, they have further committed an offence under Section 201 IPC.

[8]. As against the aforesaid, learned counsel for the petitioner again submitted that even as per disclosure statements of Pardeep Kumar dated 10.09.2019 and 11.09.2019, he was having an affair with Nikita. Nikita started pressurizing him for marriage. Petitioner was having knowledge about the same. On 29.08.2019, Pardeep Kumar came to the petitioner, who had also called Waseem. Petitioner suggested Pardeep to kill Nikita. All the three made conspiracy and went to Kaptan Farm House for finding a place. On 30.08.2019, Pardeep called Nikita and picked her in the car and then killed her by strangulating her throat. Thereafter, he called petitioner on phone. Then Petitioner and Waseem both came to Master road near Tikawali. Then all the three sat in the car for the purpose of disposing the body. They went to Yamuna bank and a pit was dug by them. Dead body of Nikita was buried in that pit.

[9]. In the disclosure statement dated 11.09.2019, Pardeep Kumar disclosed that on reaching Tikawali, Nikita's dead body was lying on the rear seat of his car. Petitioner and Waseem

had come in a car, which was parked by the petitioner at Tikawali Mor and then petitioner sat on the front seat of Pardeep's car and Waseem sat near the dead body on the rear seat. All the three reached Bhupani Mor and on the asking of Pardeep, petitioner purchased two *Kassi(s)* and put them in the car. Thereafter, they reached in front of Kaptan Farm House near Yamuna bank. Then, Pardeep and Waseem dug a pit near a bush. During that period, petitioner was watching the dead body and the passerby. Thereafter, Pardeep by holding hands of Nikita's dead body and Waseem by holding her legs, put the dead body in the pit. Pardeep took two stones from there and put them on the dead body and Waseem took a cloth from the car and put upon the face and upper part of dead body of Nikita and buried the same. Thereafter, they put the *Kassi* in the car and came back to Faridabad. While returning back, the car was driven by the petitioner. Pardeep was feeling uneasy because of this incident. On 04.09.2019, Pardeep got his car hit into a parked trolly near BPTP and got himself admitted in Metro Hospital for getting himself saved from the arrest.

[10]. Learned counsel for the petitioner also relied upon disclosure statement of Waseem and contended that act of murder was done by Pardeep alone. Petitioner associated Pardeep at a later stage at the time of burying the dead body.

The alleged planning, if any, would be subject to scrutiny of evidence by the Court. The alleged extra-judicial confession made before PW-3 Kuldeep Singh cannot be relied against the petitioner as Kuldeep Singh was not knowing the petitioner prior to the incident. Petitioner allegedly made a telephonic call on 10.09.2019 at 7.00 A.M. The witness allegedly made some recording of the said phone call and later on produced CD of the same to the police.

[11]. Learned counsel further submitted that preparation of CD cannot be termed to be primary evidence under Section 62 of the Evidence Act. In view of **Anvar P.V. vs. P.K. Basheer and others, 2014(4) R.C.R. (Civil) 504**, such an electric record cannot be admitted by way of secondary evidence without compliance of Section 65-B of the Evidence Act. The aforesaid view has been reiterated by the Hon'ble Apex Court in **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and others, 2020(2) R.C.R. (Civil) 256**.

[12]. I have considered the submissions made by learned counsel for the parties.

[13]. At this stage, three prosecution witnesses have been examined. Further cross-examination of the prosecution witness has been stalled due to the situation arising out of COVID-19

pandemic. Petitioner is in custody since 12.09.2019. The complicity of the petitioner on the basis of disclosure statements of co-accused Pardeep, Waseem and the extra-judicial confession would be debatable with reference to the material on record by the trial Court.

[14]. At this stage, without adverting to the merits of the case and in view of the situation arising out due to COVID-19 pandemic, I deem it appropriate to enlarge the petitioner on regular bail.

[15]. In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

[16]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

November 27, 2020

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No