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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.12845 of 2020 (O&M)
Date of Decision: 05.06.2020

DEENU

.....Petitioner

Vs

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ramesh Chahal, Advocate
for the petitioner.

Mr. Anant Kataria, D.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

The case has been taken up for hearing through video conferencing.

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.396 dated 14.05.2019, registered under Sections 148, 149, 323, 452, 364, 285, 302 IPC and Sections 25/54/59 of the Arms Act at Police Station Nuh District Nuh, Haryana.

The FIR was registered at the instance of Saikul. Allegations are that at about 12.30 a.m., the complainant and others heard cries of his brother Sakir and his wife Yasmin. Complainant, his wife, his father and his mother woke up and

came out and saw that 10-12 persons were standing and pulling Sakir forcibly. The persons were Sapat, Junaid sons of Kallu, petitioner (Deenu), Bashir and Rashid along with 5/6 unknown persons. When the complainant tried to rescue his brother, then Junaid gave a blow on left side of his neck with a pointed weapon. He gave second blow in the abdomen of the complainant from reverse side. They also gave injuries to the sister-in-law of the complainant namely Yasmin and they forcibly kidnapped Sakir in a vehicle. The complainant-party chased them, then Sapat fell down from the vehicle at the Chowk. Sapat was apprehended. The remaining accused while firing, took away Sakir forcibly in the vehicle. The kidnappers had come in two vehicles. Sapat was tied with ropes in the Chowk and police was informed.

Sapat ultimately died on that very day on account of injuries on his person. FIR No.397 dated 14.05.2019 under Sections 148, 149, 307, 302, 365 IPC and Sections 25/54/59 of the Arms Act was got registered in respect of murder of Sapat by the petitioner at about 2.47 p.m. The FIR was registered on the basis of original complaint made by the petitioner at about 12.40 p.m.

Learned counsel for the petitioner submitted that the factum of lodging of FIR by the petitioner is suggestive of the

fact that the petitioner did not accompany the accused party, who had allegedly abducted Sakir. The petitioner remained with the Police in the process of making complaint and getting the FIR registered in respect of death of Sapat.

As per prosecution case, Sakir was thrown from the vehicle in village Kaithwada-Khoh road. The Police has recorded the statement of one Khursid in this context on 15.05.2019. At that time Sakir was alive and Police has prepared some video of Sakir in which he disclosed something about the incident.

In reply to the bail application filed in the Court of Sessions, the Police has taken a stand that when Sakir was thrown out of the vehicle in village Kaithwada (Rajasthan), name of the petitioner did not figure, but he was present at the time of original occurrence of kidnapping.

Learned counsel for the petitioner submitted that lodging of FIR No.397 dated 14.05.2019 in respect of death of Sapat and petitioner's presence with the Police throughout thereafter would make the complicity of the petitioner in the present FIR debatable.

Learned counsel further submitted that the Police has not collected any incriminating material suggesting any role of

the petitioner in the context of murder of Sakir. The video clip along with statement of ASI Rajesh Kumar had already been brought before the Investigating Officer during course of investigation. The presence of the petitioner in village Kaithwada would remain debatable in the light of facts and circumstances of the case.

Per contra, learned State counsel however opposed the prayer on the ground that the petitioner was present at the time of original occurrence of abduction of Sakir from the house of the complainant. FIR is to the effect that except Sapat, all boarded the vehicle along with the abductee and the petitioner is one of the participants in the commission of offence. Challan has been presented and no prosecution witness has been examined so far.

Having heard learned counsel for the parties, I am of the *prima facie* view that in view of lodging of FIR No.397 dated 14.05.2019 in respect of death of Sapat, the presence of the petitioner in village Kaithwada would be debatable.

At this stage, without adverting to the merits of the case, I am of the view that petitioner, who is in custody since 15.05.2019 can be enlarged on bail.

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.

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

June 05, 2020	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No