

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

**CRM-M No.31189 of 2020 (O&M)
Date of Decision: 27.11.2020**

Arshad

.....Petitioner

Vs

State of Haryana

.....Respondent

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

Present: Mr. Virendra Rana, Advocate
for the petitioner.

Mr. Vikrant Pamboo, D.A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. The case was taken up for hearing through video conferencing.

[2]. 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 148/149/323/364/285/452 IPC and Sections 25-54-59 of the Arms Act (Section 302 IPC added later on) at Police Station Nuh, District Mewat.

[3]. The FIR was registered on the statement of Saikul with the allegations that in the night of occurrence at about 12/12.30 A.M., the complainant and others heard cries of his brother Sakir

and his wife Yasmin. The complainant, his wife, his father and his mother woke up and came out of the house and saw that 10-12 persons were standing and pulling Sakir forcibly. Those persons were Sapat, Junaid sons of Kallu, 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. The assailants 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 succeeded in taking away Sakir forcibly while firing. The kidnappers had come in two vehicles. Sapat was tied with ropes at the Chowk and police was informed. Sapat ultimately died on that very day on account of injuries on his person. FIR No.397 was registered on 14.05.2019 under Sections 148, 149, 307, 302, 365 IPC and Sections 25/54/59 of the Arms Act in respect of murder of Sapat by Deenu at about 2.47 P.M.

[4]. As per prosecution case, Sakir was thrown from the vehicle in village Kaithwada-Khoh road. The Police recorded statement of one Khursid in this context on 15.05.2019. Sakir was alive at that time and the Police had prepared some video

of Sakir in which he had disclosed something about the incident.

[5]. Learned counsel for the petitioner submitted that during the proceedings of bail before the Court of Sessions in respect of co-accused Deenu, the Police has taken specific stand that Sakir was thrown out of the vehicle in village Kaithwada (Rajasthan) and the name of Akbar did not figure there. Name of Akbar figured only in the disclosure statement of co-accused which suggested the alleged conspiracy involving Akbar. The co-accused Deenu has already been granted regular bail by this Court vide order dated 05.06.2020 passed in CRM-M No.12845 of 2020. Co-accused Akbar has also been granted regular bail vide order dated 28.08.2020 passed in CRM-M No.24045 of 2020. Petitioner was nominated in the disclosure statement of co-accused Akbar.

[6]. Learned counsel further submitted the alleged version recorded in the mobile phone and thereafter transferring the same in Pen Drive Cruzer Blade of 16 GB would be hit by Section 65(B) of the Evidence Act as the same is a secondary evidence. In the certificate issued under Section 65(B) of the Evidence Act, there is no reference of Pen Drive. Preparation of Pen Drive would be the result of uploading the video from whatsapp on computer and then in the Pen Drive.

[7]. In view of aforesaid, learned counsel further submitted

that the complicity of the petitioner would remain debatable as the Pen Drive cannot be termed to be primary evidence under Section 62 of the Evidence Act and in the absence of compliance under Section 65-B of the Evidence Act, such an electronic record cannot be admitted. Learned counsel relied upon **Anvar P.V. vs. P.K. Basheer and others, 2014(4) R.C.R. (Civil) 504** and **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and others, 2020(3) R.C.R. (Civil) 256.**

[8]. Per contra, learned State counsel submitted that petitioner is a known criminal and is required in different States. He has some antecedent behaviour of criminal activities in number of cases. With reference to number of cases, learned State counsel further submitted that in some of the cases, the petitioner has been acquitted in Rajasthan and in some of the other cases, he is still at large and cases are still pending in Rajasthan.

[9]. As against this, learned counsel for the petitioner again submitted that the alleged involvement of the petitioner in some other cases cannot be a ground for consideration of bail on merits as the petitioner is involved only on the basis of disclosure statement of Akbar, who has since been granted regular bail by this Court. Petitioner is in custody since 07.03.2020. Challan has already been presented. No recovery

is to be effected from the petitioner.

[10]. At this stage, without commenting upon anything on 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.

[11]. 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.

[12]. 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