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

CRM-M-2237-2021 (O&M)
Date of decision : 08.03.2021

Imran

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Mazlish Khan, Advocate for the petitioner.

Mr. Anant Kataria, DAG, 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 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 at Police Station Nuh, District Nuh.

FIR was registered on the statement of Saikul with the allegations that in the night of the date of occurrence at about

12/12:30 AM, the complainant and others, heard the 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 to 12 persons were standing and pulling Sakir forcibly. The assailants were Sapat, Junaid sons of Kallu, Deenu, Bashir and Rashid alongwith 5-6 unknown persons. The complainant tried to rescue his brother. Thereafter, Junaid gave a blow on the left side of his neck with a pointed weapon. Junaid also gave second blow in the abdomen of the complainant from the reverse side. The assailants also gave injuries to sister-in-law of the complainant namely Yasmin and they forcibly kidnapped Sakir in a vehicle. The complainant and others chased them. Thereafter, Sapat fell down from the vehicle at the chowk. Sapat was apprehended by the complainant party. Remaining accused succeeded in taking away Sakir forcibly alongwith them while firing. The kidnappers had come in two vehicles. Sapat was tied with rope at the chowk and the Police was informed. Sapat ultimately died on that day on account of injuries on his person.

Separate FIR No.397 was registered on 14.05.2019 under Sections 148, 149, 307, 302, 365 of IPC and Sections 25, 54, 59 of the Arms Act. FIR was got registered by Deenu in respect of murder of Sapat. The said FIR was got registered at

about 2:47 PM.

As per the prosecution case, Sakir was thrown from the vehicle in Village Kaithwada-Khoh Road. The Police recorded the statement of one Khursid in this context on 15.05.2019. When Sakir was alive, the Police also prepared some video in which Sakir had disclosed something about the incident.

Learned counsel for the petitioner submits that the petitioner has not been named in the FIR. His name has been nominated on the basis of disclosure statement of Suresh who himself alongwith others was implicated on the basis of a video clip allegedly prepared by the Police when Sakir was alive.

Learned counsel for the petitioner further submits that the alleged version recorded in the mobile phone of Police personnel and thereafter transferring the same in pen drive Cruzer Blade of 16 GB would be hit by Section 65(B) of the Indian Evidence Act as the same is secondary evidence. In the Certificate issued under Section 65(B) of the Indian Evidence Act, there is no reference of pen drive. The preparation of the pen drive would be result of uploading the video from Whatsapp on computer and then in the pen drive.

Co-accused namely Deenu has been granted regular bail by this High Court vide order dated 05.06.2020 in CRM-M-

12845-2020, co-accused namely Akbar has been granted regular bail by this High Court vide order dated 28.08.2020 in CRM-M-24045-2020, and co-accused namely Arshad has been granted regular bail by this High Court vide order dated 27.11.2020 in CRM-M-31189-2020.

Learned counsel for the petitioner further submits that the complicity of the petitioner on the basis of disclosure statement of co-accused and on the basis of pen drive would remain debatable as the pen drive cannot be termed as primary evidence under Section 62 of the Indian Evidence Act. In absence of strict compliance of Section 65 of the Indian Evidence Act, electronic record of this nature cannot be admitted.

Learned counsel for the petitioner places reliance upon **Anvar P.V. Vs. P.K. Basheer and others, 2014(4) RCR (Civil) 504** and **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others, 2020(3) RCR (Civil) 256**.

On the other hand, learned State Counsel strongly opposed the prayer on the ground that the petitioner is having antecedent behaviour of criminal activity. He is involved in 6 cases, though, the petitioner is on bail in those cases but he is a known criminal.

Keeping in view the factual details of the case

particularly in the light of bail granted to the co-accused and nomination of the petitioner on the basis of disclosure statement of the co-accused and video clipping, I deem it appropriate to treat the petitioner on parity with co-accused Arshad who has already been granted regular bail by this High Court on 27.11.2020 vide CRM-M-31189-2020.

In view of the above and without making any observations on the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

In view of above, the petition is allowed. Petitioner is ordered to be released on regular 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.

08.03.2021

Pawan

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No