

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.10539 of 2021(O&M)
Date of Decision: 05.04.2021

Pradeep Kumar

.....Petitioner

Vs

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Y.S. Rathore, Advocate
Mr. Yuvraj Rathore, Advocate and
Ms. Sudha Singh, Advocate
for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

Mr. Ram Bilas Gupta, Advocate
for the complainant.

RAJ MOHAN SINGH, J.

[1]. The 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 and 366-A IPC (Sections 302, 201, 120-B IPC added later on) at Police Station Kheri Pul, Faridabad.

[2]. The FIR was registered on the statement of Ajab Singh to the effect that his daughter had gone to purchase some goods from a nearby grocery shop and thereafter, she did not

return back home. The FIR was registered against unknown persons by the complainant, who might have taken away daughter of the complainant namely Nikita with some ulterior motive of marrying her.

[3]. Learned counsel for the petitioner submitted that the petitioner has been nominated on the basis of extra-judicial confession before Kuldeep Singh (PW-3), which is a weak type of evidence. Learned counsel further submitted that the police has recorded two confessional statements of the petitioner, which are inadmissible in law. During course of investigation, the petitioner and Waseem were arrested on 10.09.2019 and dead body of Nikita was allegedly shown to be recovered by the petitioner and co-accused Waseem. In view of disclosure statements made by the petitioner, the recovery of dead body was effected and the recovery memo did not bear signature of the petitioner. The alleged identification of the place of recovery, would remain debatable as per Evidence Act as the fact already in the knowledge of the police, would not give rise to any such admissible piece of evidence qua the alleged place of recovery. Co-accused Amar Singh was arrested on 12.09.2019. When the FIR was a blind FIR, therefore, the prosecution ought to have conducted test identification parade before the Illaqa Magistrate at the time of their production before the Court.

[4]. Learned counsel further submitted that no recovery has been effected from the petitioner and no motive can be attributed. It is a case of no evidence against the petitioner and petitioner is in custody since 10.09.2019. The material witnesses have been examined and there is no chance of tampering with the prosecution evidence in any manner. The trial of the case would take long time to conclude as out of total 38 prosecution witnesses, only 6 witnesses have been examined so far.

[5]. *Per contra*, learned State counsel on instructions from Investigating Officer submitted that as per material available on record, Nikita was murdered by the petitioner and her dead body was placed in a pit near Bank of Yamuna in order to destroy the evidence. The dead body of Nikita was recovered from Bank of Yamuna near Kaptan Farm House on the demarcation of the petitioner. Nikita was murdered by the petitioner on the asking of the co-accused. As per disclosure statements of the petitioner dated 10.09.2019 and 11.09.2019, he was having some affair with the deceased and Nikita started pressurizing the petitioner for marriage. On 29.08.2019, the petitioner contacted co-accused Amar Singh who also called Waseem. Thereafter, all the three made a conspiracy and in pursuance thereof, went to Kaptan Farm House for finding an

appropriate place. On 30.08.2019, the petitioner called Nikita and picked her in a car and then killed her by strangulation. Thereafter, the petitioner called Amar Singh on phone. Amar Singh and Waseem came to master road near Tikawali. Thereafter, all the three sat in the car for disposing the dead body. They went to Yamuna Bank and dug a pit and thereafter, dead body was buried in that pit. In the disclosure statement dated 11.09.2019, the petitioner disclosed that on reaching Tikawali, dead body of Nikita was lying on the rear seat of the car. Amar Singh and Waseem had come at that time in a car, which was parked by Amar Singh at Tikawali Mor and thereafter, Amar Singh sat on the front seat of the car of the petitioner and Waseem sat near dead body on the rear seat. Thereafter, all the three reached Bhupani Mor and on the asking of the petitioner, Amar Singh purchased two Kassi(s) and put them in the car. Thereafter, all the three reached in front of Kaptan Farm House near Bank of Yamuna. Petitioner and Waseem dug a pit. Amar Singh was keeping a watch on the surroundings. Petitioner by holding hands of Nikita's dead body and Waseem by holding her legs, put the dead body in the pit. Petitioner took two stones from there and put them on the dead body. Waseem took a cloth from the car and put on the face and upper part of the dead body of Nikita. In this manner, dead body

of Nikita was buried. Thereafter, they put the Kassi(s) in the car and came back to Faridabad. While coming back, the car was driven by Amar Singh. Petitioner was feeling uneasy. On 04.09.2019, petitioner got his car hit into trolly near BPTP and got himself admitted in Metro Hospital in order to get himself saved from the arrest.

[6]. Learned counsel for the petitioner submitted that preparation of CD cannot be termed to be primary evidence in view of Section 62 of the Evidence Act. The electronic record cannot be admitted directly by way of secondary evidence without compliance of Section 65-B of the Evidence Act. Co-accused Amar Singh has been granted regular bail by this Court vide order dated 27.11.2020 passed in CRM-M No.12611 of 2020.

[7]. Learned State counsel, however, opposed the bail on the ground that the petitioner is the prime accused. The disclosure statements of the petitioner led to recovery of dead body. The criminal conspiracy is an act which involves *mens rea* i.e. mental state of the accused.

[8]. The case of the petitioner cannot be equated with co-accused Amar Singh as by the time Amar Singh joined the petitioner, Nikita had already been murdered by the petitioner. Amar Singh joined the petitioner only in terms of Section 201

IPC for destroying the evidence.

[9]. At this stage, no firm finding can be given, *lest* it may prejudice the case of either of the parties during trial. Petitioner is the main accused. The disclosure statements of the petitioner have led to recovery of dead body. Whether this aspect of the case would be covered under Section 27 of the Evidence Act, would be seen by the trial Court on the basis of quality of evidence to be led by both the parties during trial.

[10]. Keeping in view the allegations against the petitioner being of prime accused, at this stage, I do not see any justification to grant bail to the petitioner on parity with co-accused Amar Singh. The present petition is found to be totally devoid of merits and is dismissed as such.

[11]. Nothing observed hereinabove, shall be construed to be an opinion on merits of the case.

05.04.2021

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No