

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

CRM-M-9780 of 2020 (O&M)

Mintu ...Petitioner

Versus

State of Haryana ...Respondent

and

**2. CRM-M-34880 of 2020 (O&M)
Date of Decision: October 26, 2021**

Akash @ Tinku ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.V.P. Sangwan, Advocate
for the petitioner in CRM-M-9780-2020.

Mr. J.S. Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate
for petitioner in CRM-M-34880-2020.

Mr.Surender Singh, AAG, Haryana.

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This order shall dispose of two petitions bearing CRM-M-9780-2020 and CRM-M-34880-2020 as both have arisen out of the same FIR.

The petitioners in both the petitions have sought regular bail under Section 439 Cr.P.C. in case FIR No.117 dated 16.07.2016, under Sections 201, 364, 365, 302, 34 IPC, registered at P.S Loharu, District

Bhawani.

CRM-M-34880-2020 is filed by Akash alias Tinku and CRM-M-9780-2020 is filed by Mintu.

The FIR was lodged on the statement of one Babu Lal Saini, recorded on 14.07.2016. He stated that his son namely Amit alias Mufla was at his home on 28.06.2016. At about 8 O'clock a friend of Amit named Devender alias Pucchi resident of Loharu came to their residence and took his son (Amit) out on the pretext of some work. Devinder told the wife of the complainant that he was taking Amit for some time and they would come back after a short while. The complainant and his wife waited the entire night for them to return. However, they did not come back. Next day, the complainant and his family members searched for Amit everywhere but they could not locate him. After three days Devender alias Pucchi came to the house of complainant and asked whether Amit had come home. As Amit had gone with Devinder, the wife of the complainant asked him as to where Amit was. On this Devender alias Pucchi became perplexed and fled from there. Thereafter, he also could not be contacted. The complainant stated that his son was missing. He was 21 years old. The complainant also provided the mobile number of Devender alias Pucchi which was switched off.

Mr. J.S. Bedi, Ld. Senior Counsel appearing for petitioner Akash @ Tinku and Mr. Sangwan Ld. Counsel for petitioner-Mintu argued that the petitioners are not named in the FIR. The FIR was lodged as many as 18 days after the son of the complainant had gone missing. The names of the petitioners have cropped up in the supplementary statement of the complainant recorded on 13.08.2016 i.e. after 47 days his son had gone

missing. Even in the said statement, complainant has not mentioned anything about enmity and rivalry between his son and those named by him.

The body which is stated to have been recovered on the disclosure statement of Rohit has been recovered from an open field. The body has not been proved to be that of the son of the complainant. DNA samples of the complainant and his wife Geeta were taken and sent to the FSL for DNA examination along with a piece of the bone of the body/skelton recovered on the disclosure of Rohit. As per the report of FSL, as the DNA profile could not be generated from the bone which was necessary to compare with that of DNA samples of the complainant and his wife, no opinion could be given regarding the matching of the DNA. The alleged recoveries were effected prior to the arrest of the petitioners. The recovery of one *kassi* and motorcycle has been falsely foisted upon the petitioner-Akash @ Tinku. PW7 ASI Rajbir Singh in his cross examination has admitted that no recoveries were made on the disclosure statements of the petitioners.

Learned counsel contended that the petitioners have been falsely implicated in the case on the alleged disclosure statement of co-accused Rohit, which has no value in the eyes of law. It is also argued that the entire case of the prosecution is based on circumstantial evidence which does not connect the petitioners with the alleged crime.

A status report by way of affidavit of Arvind Dahiya, HPS, Deputy Superintendent of Police, Loharu, District Bhiwani, Haryana has been filed on behalf of the respondents. It is stated that during investigation, after finding cogent evidence against co-accused Rohit alias

Romi he was arrested on 14.08.2016. Rohit suffered disclosure statement

stating that he was a friend of Mintu Jhakar (petitioner), Tinku alias Akash son of Jaipal (petitioner) and Devender alias Puchi alias Joginder. Tinku alias Akash told him that Amit alias Mufla (deceased) had a fight with him about two months back. At that time, Amit had told him something objectionable. Tinku @ Akash nursed a grudge against Amit because of this. Tinku asked Rohit that as Amit was close to him and trusted him he should ask Puchi alias Devender alias Joginder to call Amit from his home so that he could be killed. On 28.06.2016 Rohit sent Devender alias Puchi alias Joginder to Amit. Puchi took Amit to the temple in village Fartia Tal on his motorcycle where Rohit, along with Tinku alias Aakash and Mintu were present as per plan. Tinku and Mintu were on motorcycle. From there all went to the fields. There all of them consumed intoxicant tablets. Tinku forcibly administered intoxicant tablets to Amit where after he became unconscious. Then Mintu kicked on private parts of Amit. Tinku Nehra @ Akash attacked Amit on his head and neck with Kulhari. Puchi alias Devender alias Joginder gave injuries to Amit on his back and chest with pokar (SUA). Rohit held both the hands of Amit. Amit succumbed to the injuries. Thereafter all of them buried the dead body of Amit in the corner of southern side near the bushes in the fields of Jaipal . The Kulhari with blood stains which was used in the incident was placed near the dead body of Amit.

It is further stated that Rakesh Kumar Chhokar, the then Executive Magistrate Lohari came on the spot and on digging as per the disclosure statement of Rohit, the dead body of Amit in a decomposed condition in pieces was found lying along with the axe. As per post mortem

in nature. On 17.08.2016 Mintu (petitioner) was arrested. Petitioner Akash was arrested on 03.08.2018. In pursuance of his disclosure statement iron *Kassie* (spade – an agriculture tool) with wooden handle and motorcycle Hero Splender used in the commission of offence were recovered.

Undoubtedly, it is true that as per the report of FSL, because the DNA profile could not be generated from the bone which was necessary to compare with that of DNA samples of the complainant and his wife, no opinion could be given regarding the matching of the DNA. But the body recovered on the disclosure statement of co-accused Rohit had been duly identified by the brothers (Subhash and Ram Niwas) of the deceased in their statements under Section 175 Cr.P.C recorded at the time of recovery of the body. Both of them, who are witnesses of recovery of the dead body, identified the dead body and confirmed it to be that of Amit s/o Babu Lal. The joint statement of the respectable persons of the village (present at the time of recovery) was also recorded who stated that the dead body was identified to be that of Amit by his brother on the basis of the shoes of the deceased found on the dead body. They also stated that they were certain that the body was of Amit. PW7 ASI Rajbir Singh in his cross examination had admitted that the pieces of dead body were not identifiable generally. But he stated that Sandeep, the brother of the deceased had identified his dead body.

Subhash and Ram Niwas brothers of the deceased in their statements u/s 175 Cr. P.C. stated that the body had been dug out from the fields of Jaipal, the father of petitioner Akash. To the same effect is the statement of other respectable persons of the village who were present at the time of recovery of the body. The fact that it was an open area with no

boundary wall or barbed wire would not make much difference as the field belonged to father of the petitioner Akash.

In the light of the above, no ground is made out for grant of bail to the petitioners.

Petitions dismissed.

It is made clear that any observation made hereinabove shall not be construed as an expression of opinion on the merits of the case.

October 26, 2021
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No