

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

**CRM-M-19929-2021
Date of Decision : 24.08.2021**

Krishan Gopal @ Kittu

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Ravinder Malik (Ravi), Advocate
for the Petitioner.

Mr. Bhupender Singh, Dy. Advocate General, Haryana
for the Respondent/State.

SUDIP AHLUWALIA, J. (ORAL)

Case has been taken up through Video Conferencing in view of the outbreak of Covid-19 Pandemic.

2. The instant Petition has been filed under Section 439 of the Code of Criminal Procedure seeking Regular Bail on behalf of the Petitioner in case FIR No.376, dated 31st July, 2019, registered under Sections 302, 201, 120-B of the Indian Penal Code, at Police Station City Shahabad, District Kurukshetra.

3. The Petitioner has remained in detention for almost one year in the present case since 13th September, 2020.

4. As per the case of prosecution, on 30th July, 2019 at about 8.00 P.M., Complainant Rakesh Kumar came to know that dead body of a young person, some part of which had been eaten by animals, was lying in his

fields. On this, he informed the Police, who came to the spot and carried out investigation. As per Post Mortem Report, the cause of death was head injuries sufficient to cause death in ordinary course of nature. The dead body had also been burnt. During investigation, on 15.08.2019, Balwinder Singh and Nirmal Singh, came to the Police Station and on the basis of articles recovered from dead body, identified the same to be of their relative Sandeep Kumar. They also disclosed mobile phone No.8222835022 of deceased Sandeep Kumar, call details of which were collected by the Investigating Officer, on the basis of which, it transpired that a day prior to occurrence Sandeep Kumar had been in touch with accused Ajay Kumar on mobile No.9729845365 and with accused/Petitioner Krishan Gopal on mobile No.8708919474. On this, the Police arrested accused Ajay Kumar and accused/Petitioner-Krishan Gopal. They suffered Disclosure Statements admitting their involvement in crime. On the basis of Disclosure Statements, accused-Petitioner Krishan Gopal got recovered the memory card used in his mobile by which he had videographed the incident of murder, whereas, accused Ajay Kumar demarcated the place where he along with accused-Petitioner Krishan Gopal had thrown the mobile of deceased Sandeep Kumar after destroying the SIM card.

5. Ld. Counsel for the Petitioner has submitted that his Client is entitled to be released on bail on the ground of parity with co-accused Ajay Kumar, who was granted Regular Bail by this Court on 19th April, 2021 in CRM-M No.8791 of 2021. To substantiate this contention, it has been

submitted by Ld. Counsel that like co-accused Ajay Kumar the material available against the present Petitioner also happens to be his own Disclosure Statement or Statements of the other co-accused persons.

6. The bail prayer is nevertheless opposed on behalf of the State by contending that the Petitioner's case stands on a different footing from that of co-accused Ajay Kumar, because, as already noted in the bail order passed in favour of the said Ajay Kumar, no recovery of any incriminating material such as mobile-phone of the deceased was ever actually effected from the said accused, and that even the Ld. Sessions Judge, Kurukshetra in his order passed on 26th February, 2021 vide which the bail prayer of the said accused-Ajay Kumar was dismissed, had noticed that the accused Ajay Kumar was neither seen nor heard to be present in the video recording allegedly done by the present Petitioner after murdering the deceased, in which co-accused Shivam is seen to be hitting the head of the deceased with a heavy object/brick.

7. The CD containing the said video recording has also been attached with the Reply filed by the State, on playing which, the co-accused Shivam is clearly seen to be striking the victim with the stone-like heavy object on his head, while the victim is lying in the woods. It has been claimed on behalf of the State and also noted in the Disclosure Statements of all the accused persons that such Videography was done by the Petitioner himself and the voice being heard in the background is also of the Petitioner.

8. To counter this submission, Ld. Counsel for the Petitioner has drawn attention to the fact that no voice sample of the Petitioner was apparently collected during investigation to match the voice in the video recording, on account of which, it cannot be said that his Client was in any manner associated with the killing of the victim, or the videography was done by him. Ld. Counsel has also argued that in any case the video recording is inadmissible in evidence since it is not properly authenticated or certified in relation to relevant provisions of the Information Technology Act, 2000.

9. This Court has considered the aforesaid submissions, but finds that the case of the Petitioner is not at par with that of co-accused Ajay Kumar, who was granted Regular Bail earlier. This is so, because as already noted, no recovery of any incriminating material whatsoever was effected from the said co-accused whereas the memory-card containing the video recording purportedly done by the Petitioner was recovered from none else than the Petitioner himself.

10. The contention that such recovery of the memory card, or for that matter, of the motor-cycle belonging to his father which was allegedly used by the culprits in committing the offence are all false and planted, is essentially a question to be considered only during trial on the basis of the entire evidence to be led from the prosecution side. Similarly the evidentiary value of the video recording which is also a part of the Challan Papers can only be considered by the Trial Court itself. But, the fact that the

Petitioner was in contact with the deceased a day before the latter's murder, as seen from his Call Detail Records, and that the incriminating video recording was recovered from him would *prima facie* indicate that his association with the murder of deceased Sandeep in some manner or the other, cannot be entirely ruled out.

11. For the aforesaid reasons and considering the gravity of the offence involved, this Court finds no reason to consider release of the Petitioner on bail, at this stage.

12. Dismissed.

August 24, 2021

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No