

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

CRM-M-33716-2021 (O&M)

Date of Decision: 29.11.2021

Ram Kumar

...Petitioner

Versus

UT Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Ashish Pal Kaushal, Advocate, for the petitioner.

Mr. Ashu Mohan Punchhi, PP, UT Chandigarh.

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.119 dated 10.04.2018 at Police Station Sector 36, Chandigarh, under Section 302/120B IPC.
2. The FIR in question was lodged pursuant to an information received by the police from one unknown person regarding presence of a dead body in a park in Sector 52. Upon receipt of said information, the police went to said park and dead body of a young man (later found to be aged 33 years) was found, which was bearing several injuries including a mark of strangulation. Upon inquiry, the deceased was identified as Dharmender, whose dead body was identified by his sister Rekha.
3. It is further the case of prosecution that during the course of investigation the police recorded the statement of Umesh Kumar,

who is owner of House No.1732, Sector 52, Chandigarh and who stated that Dharmender along with his wife was residing as a tenant on the first floor of his house. He stated that Dharmender confided in him that something unfortunate may happen to him and suspected that his “*saala*” Ramu was having illicit relations with his wife Seema and although said Ramu and Seema were related being brother and sister, but he used to touch her inappropriately. During the course of investigation, statement of Rekha, sister of the deceased, was also recorded who also stated that the relation between the deceased and his wife Seema were strained and that she suspected that Seema was having illicit relations with Ramu. To a similar effect was the statement of Sudha, who is a neighbor of the deceased.

4. It is further the case of prosecution that after arrest of Ram Kumar, he suffered a disclosure statement admitting his guilt that he along with his friend Omkar had done away with the deceased. It is the case of prosecution that Omkar was also apprehended by the police, who also suffered a disclosure statement admitting his guilt. It is the case of prosecution that both Ram Kumar and Omkar admitted that while Ram Kumar had killed the deceased by causing the injuries and strangulating him, Omkar kept a watch. It is the case of prosecution that during the course of commission of murder, the deceased had bit the finger of Ram Kumar which started bleeding and that on the asking of Ram Kumar, Omkar brought him fresh clothes.

5. Learned counsel for the petitioner has submitted that it is a case of blind murder based on circumstantial evidence and that there is no convincing evidence to connect him with the alleged murder of Dharmender. Learned counsel has further submitted that the sister of the deceased, namely, PW-2 Rekha (Annexure P-2) has not supported the case of the prosecution and was declared hostile. It has further been submitted that even PW-4 Sudha in her statement recorded on 03.10.2018 (Annexure P-3) has also not supported the case of the prosecution and was declared hostile. It has been submitted that although the landlord of the premises where the deceased was residing i.e. PW-5 Umesh Kumar did depose in his examination-in-chief that Dharmender had confided in him that something unfortunate may happen to him and that Ramu used to give beatings to him and he suspected that Ramu was having illicit relations with his wife Seema and used to touch her inappropriately, but during the course of cross-examination, he stated that Dharmender had never called the police against accused Ramu and to his knowledge Dharmender had never called his relatives on the issue of alleged illicit relations of his wife and that he himself had never seen accused Ramu committing any objectionable act with Seema. He stated that Dharmender had never told him that he had ever seen accused Ramu and accused Seema in any objectionable or compromising position. Learned counsel has further submitted that the petitioner has been behind bars for a substantial period of about 3 years and 7 months and as

such, deserves to be released on bail particularly when none of the material witnesses has supported the case of the prosecution.

6. Opposing the petition, learned Public Prosecutor representing the UT Chandigarh has submitted that since during the course of investigation evidence had surfaced to show that the petitioner along with co-accused had killed Dharmender, as he was having some kind of illicit relations with Dharmender's wife, no case for grant of bail is made out. Learned Public Prosecutor has, however, informed that the petitioner as on date has been behind bars since the last about 3 years, 7 months and 16 days and that he is not involved in any other case.
7. I have considered rival submissions addressed before this Court.
8. Admittedly, the case is based on circumstantial evidence and there is no eye-witness of the occurrence. The prosecution mainly relies upon the evidence of the landlord, neighbor and sister of the deceased to establish that the petitioner had illicit relations with the wife of the deceased and on account of which he had eliminated the deceased. However, PW-2 Rekha, who is sister of the deceased as well as PW-3 Sudha have not supported the case of the prosecution at all and have been declared hostile. The evidentiary value of the statement of PW-5 Umesh Kumar (landlord) will be assessed at the time of arguments as he has been extensively cross-examined to demolish his examination-in-chief. In any case, the petitioner, who is not involved in any other case, has been behind bars for a substantial period of more than 3 years and 7 months. Conclusion of trial is likely to consume time, as a substantial

number of witnesses still remain to be examined. In these circumstances, particularly keeping in view the custody of the petitioner and his clean record, the instant petition merits acceptance and is hereby accepted. The petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

29.11.2021
Vimal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No