

In virtual Court

CRM-M-33357-2021

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-33357-2021 (O&M)  
Date of decision: 04.10.2021

Yusuf

... Petitioner

Vs.

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present: Mr. Mohd. Arshad, Advocate  
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

Mr. Farukh Abdullah, Advocate  
for the complainant.

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**ARVIND SINGH SANGWAN, J.**

Prayer in this petition is for quashing of the order dated 17.03.2021 passed by the Illaqa Magistrate, vide which warrants of arrest have been issued and declaration of reward of Rs.5,000/- on arrest of each accused in FIR No.224 dated 19.06.2020 under Sections 302, 120-B IPC, registered at Police Station Ferozepur Jhirka, District Nuh (Mewat) was also issued.

Brief facts of the case are that the FIR was registered on the statement of Akhlash with the allegations that on 18.06.2020, Hakam came on

his motorcycle and took away his father at about 7.00 p.m. and the family waited till 10.00 p.m. When he did not come back, the complainant tried to call his father on phone, but the same was switched off and thereafter, the family members started searching him. On enquiry Hakam said that Yakoob had left him. After some time, at about 2.00 a.m., a message was received from mobile No.70275-84286, which belongs to Sheru, who informed that Yakoob is lying in the forest area of Village Sakras. When the complainant and his family members reached there, they found that Yakoob is lying in the forest area and there were injuries on his hands, feet and private part. He was taken to Mandi Khera Hospital, where he was declared dead. After registration of the FIR, investigation was conducted and post-mortem was got conducted. Thereafter, pathology report was taken and cause of death, as per medical opinion, was to be declared after receipt of viscera and chemical examination report. Again, opinion was sought on receiving the viscera report and the Medical Officer opined that *cause of death is cerebral hemorrhage and its complications and deceased had ingested ethyl alcohol prior to his death*. During further investigation, the petitioner was found involved in the present case and on an application given by the prosecution that the accused are avoiding their arrest and their presence be secured by way of arrest warrants, same were obtained from the Illaqa Magistrate vide impugned order dated 17.03.2021. However, on the next date of hearing i.e. 05.04.2021, it was noticed that warrants of arrest had not been executed on all the accused including the petitioner, therefore, in the absence of any further request of the Investigating Officer, papers were tagged with the case file.

Learned counsel for the petitioner submits that in the FIR, suspicion is raised on Hakam and Sheru and as per post-mortem report, there were as many as 11 injuries, out of which injuries No.6, 8 & 11 were caused by hard blunt object. It is further submitted that during investigation, accused Sher Mohd. @ Sheru made a statement that Yakoob had come to him and asked about mortgaging the land and after 10-15 minutes, he left for home. Later on, Yakoob informed him that since the land had been taken by his nephew, so he dropped the plan. Hakam and Yakoob were good friends. It is also submitted that Yakoob was in the habitual of consuming liquor and he used to talk to the boys, who impersonated themselves as ladies and Rashid, Alam and Abid, while wearing ladies dress, met Yakoob in the fields and they had scuffle, in which Yakoob fell unconscious and three of them ran away from the spot.

Learned counsel further submits that complainant Akhlesh had filed a petition i.e. CRM-M-29297-2020 praying for fair and impartial investigation in the aforesaid FIR, in which an affidavit was filed by the Superintendent of Police, Nuh that Hakmudin @ Hakku and Sheru were arrested and later on, Abid @ Habbi was arrested and the police is conducting fair and impartial investigation and is making efforts to arrest other accused and the said petition was disposed of vide order dated 08.03.2021. It is further submitted that the petitioner has been falsely implicated in this case on the disclosure statement of aforesaid accused persons just to harass him.

Learned counsel has also submitted that the trial Court has wrongly issued warrants of arrest against the petitioner, while passing the impugned order dated 17.03.2021, though the same was not extended on the next date of

hearing. It is also submitted that without disclosing the reasons in the application, arrest of the petitioner will be in violation of the provisions of Section 41(1)(b)(ii) Cr.P.C. in terms of judgment of the Hon'ble Supreme Court in **Central Bureau of Investigation Vs. Dawood Ibrahim Kaskar, (2000) 10 SCC 438**.

Learned counsel has next submitted that later on, a public notice was issued for arrest of the petitioner and even a reward of Rs.5,000/- was announced and on that account, the police is trying to arrest him and parents of the petitioner filed CRWP-6136-2021 by stating therein that the police is harassing the petitioner and the said petition was disposed of vide order dated 06.07.2021, by observing that if presence of father of the petitioner and other family members is required, the police will follow the provisions of Cr.P.C. It is further submitted that the petitioner is a minor aged about 17 years and therefore, issuance of warrants of arrest or any proclamation is in violation of provisions of Cr.P.C. Learned counsel has relied upon a judgment dated 08.11.2019 passed in CRM-M-47872-2019 (**Gurjeet Singh Johar Vs. State of Punjab and another**), wherein this Court held that the police misused powers of the Magistrate for issuance of warrants of arrest without following the procedure under Section 41 of Cr.P.C.

Reply by way of affidavit of Deputy Superintendent of Police, Ferozepur Jhirka is on record, in which, details of the facts, details of 11 injuries sustained by the victim, viscera report as well as opinion of the Medical Officer regarding cause of death and subsequent opinion, are explained. It is stated that during the investigation, it was found that the petitioner and co-

accused are involved in the murder of Yakoob and therefore, warrants of arrest were obtained from the Illaqa Magistrate and despite that the petitioner is avoiding his arrest, therefore, proclamation was also issued.

Learned State counsel has specifically denied that the petitioner is a juvenile and submits that since he has not been arrested, this fact can only be ascertained by the Juvenile Justice Board or the competent Court, after he produces any such evidence. It is further submitted that the investigation leads to cogent and reliable evidence that the petitioner was involved in murder of Yakoob.

After hearing learned counsel for the parties, I find no merit in the present petition.

So far as the judgment of the Hon'ble Supreme Court in **Dawood Ibrahim Kaskar's** case (supra) and judgment of this Court in **Gurjeet Singh Johar's** case (supra) are concerned, those are not applicable to the offence punishable under Section 302 IPC, as the directions are applicable to the offences, where sentence is less than 07 years.

Considering the serious allegations against the petitioner and finding no illegality or irregularity in the impugned order dated 17.03.2021 passed by the Illaqa Magistrate, this petition is dismissed.

[ **ARVIND SINGH SANGWAN** ]  
**JUDGE**

04.10.2021

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No