

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-42825-2021 (O&M)

Date of Decision:- 14.10.2021

Mustak

.... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Parveen Sharma, Advocate, for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana,
assisted by ASI Brijpal.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.156, dated 4.5.2019, Police Station Kundli, District Sonipat, under Sections 201, 302, 34, 120-B IPC and Section 25 of Arms Act.
2. The FIR was lodged at the instance of Anup Garg wherein he has stated that he is running a brick kiln under the name of Vansh brick kiln in village Mallah Majra, where Islam along with his wife Afsana and their children and also Deepak along with his parents and Mustak along with his brother were residing since the last about one year and

were working at the brick kiln. It is alleged that a few days back he had heard that Afsana wife of Islam is having illicit relations with Deepak and Musthak. He further stated that on 3.5.2019 Deepak and Musthak had taken Islam on their motorcycle from the brick kiln at about 9.30 pm. On the next day he came to know that Musthak and Deepak had murdered Islam and had thrown his dead body and motorcycle in a canal. It is further the case of prosecution that the dead body of Islam as well as motor-cycle was recovered on 4.5.2019 from a canal near village Malla Majra.

3. Learned counsel for the petitioner has submitted that it is a case where dead body of Islam was recovered from a canal and it cannot be said as to whether it is a case of murder or as to whether he accidentally fell in the canal or as to whether he committed suicide. It has been submitted that he has falsely been implicated in the instant case and that in any case the complainant when examined during the proceedings of trial has not supported the case of prosecution qua the petitioner and that apart from his statement there is nothing against the petitioner.
4. Opposing the petition, learned State counsel has submitted that it is a case of blind murder based on circumstantial evidence and since the complainant had seen the deceased in the company of the petitioner and one Deepak on 3.5.2019, and that since the dead body of Islam was found to be bearing a fire-arm injury, it is clearly evident that it is a case of murder and not an accidental death and that since the petitioner was seen in the company of the deceased shortly before his

death, his complicity is clearly evident. Learned State counsel has further submitted that as per the disclosure statement of the petitioner and also of co-accused Deepak, it is Deepak who had fired at the deceased and that the report of FSL is however, awaited. The learned State counsel has informed that the petitioner as on date has been behind bars since the last more than 2 years and 3 months and that he is not involved in any other case.

5. I have considered rival submissions addressed before this Court.
6. It is not disputed that it is a case of blind murder based totally on circumstantial evidence. The prosecution relies heavily on the version of the complainant i.e. Anup Garg at whose instance the FIR has been lodged. However, when the statement of Anup Garg was recorded during the course of trial, he has not supported the case of prosecution qua the petitioner and has stated that on 3.5.2019 Deepak had taken Islam on his motorcycle from brick kiln and he has not stated a word against the petitioner as regards his presence with the deceased. Apart from the said "last seen evidence" there is nothing against the petitioner other than his disclosure statement, the veracity and admissibility of which would certainly be debatable. Still further even as per the disclosure statement of the petitioner and of the co-accused, it is co-accused Deepak who is alleged to have fired at the deceased. The petitioner in any case has been behind bars for a substantial period of 2 years and 3 months and conclusion of trial is likely to consume time as only 1 out of the cited 23 PWs has been examined till date. In these circumstances, further detention of

petitioner will not serve any useful purpose. The petition, as such, is accepted and 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.

14.10.2021

Mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No