

(210)

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

CRM-M-44805-2021

Date of Decision: 23.12.2021

Sanjeev

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present : Mr. Aditya Sanghi, Advocate;
Mr. Lokesh Sharma, Advocate and
Ms. Shaveta Sanghi, Advocate
for the petitioner.

Mr. Praveen Bhadu, A.A.G. Haryana.

Mr. J.P. Sharma, Advocate
for the complainant.

VIKAS BAHL, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.100 dated 26.02.2020, registered under Sections 302/34 IPC Police Station City Mahendergarh, District Mahendergarh.

FIR in the present case was recorded on the statement given by one Rajbir to the effect that on 23.02.2020, his nephew Krishan had gone out to attend a marriage but did not return. On 24.02.2020, a phone call was received by the wife of Krishan that dead body of a person was found lying in a jungle (Bani) near village Beri and Jasawas and at some distance, a mobile phone was also found, the number of which was registered in the name of Krishan and on this basis, the FIR was registered against some unknown persons. Investigation was carried out and on the basis of the

details of the calls made from the phone of the deceased, the present petitioner and one Ankit were joined in investigation and were arrested and the disclosure statements of the petitioner and the said Ankit were recorded and thereafter the challan was presented against them.

Learned counsel for the petitioner has submitted that in the present case the petitioner has not been named in the FIR. In fact, the present FIR has been registered against unknown person. Even as per the challan, there are no details of conversations exchanged between the petitioner and the deceased and the petitioner is sought to be roped in the present case solely on the basis of some call records recovered from the phone of the deceased wherein calls were found to have been made to the petitioner. It is submitted that even as per the disclosure statement, at best the case of the prosecution is that the petitioner alongwith Ankit and the said deceased had gone together and had consumed liquor together. After the petitioner had come back to his house, a call was made by Krishan (deceased) asking him to join him in the forest alongwith Ankit so that they could have some more liquor and while having liquor, the said Krishan had told the petitioner that he wanted to sleep in the house of the petitioner where some ladies were present and that a sudden fight had then taken place and when Krishan (deceased) abused the petitioner, the petitioner allegedly picked up the wooden stick (Danda) lying in the house and hit the deceased on his head and thereafter gave several injuries on the body of Krishan. It is submitted that the disclosure statement is a very weak piece of evidence and even going by the disclosure statement, it is submitted that, it is a case of sudden fight without there being any pre-planning. Even as per the prosecution version, the petitioner, Ankit and the deceased were having

drinks together voluntarily. It is submitted that the version given in the disclosure statement is not substantiated inasmuch as it is mentioned in the disclosure statement that there was blood of the deceased on the pant of the petitioner but however, when the pant of the petitioner was recovered, the same did not have blood stains. It was stated that the same had been washed. It is further submitted that as per the disclosure statement, the petitioner and Ankit had inflicted many injuries on the head and body of the deceased. A perusal of the post mortem report would show that there were only four injuries, out of which three injuries were abrasions and had the petitioner and Ankit inflicted injuries on the head and body of the deceased with bricks, then there would have been some fractures or other serious injuries and not merely abrasions.

Even with respect to the recovery of the neem stick (Danda) from the petitioner, it is submitted that a perusal of the recovery memo dated 25.02.2020 would show that the mobile had been recovered from an area approximately 50 meters away from the dead body. The prosecution had collected a mobile phone, brick bat, sand smeared with blood, chappal from the site but no stick was recovered on the said date. It is submitted that thereafter on 27.02.2020, disclosure statement of the petitioner was recorded and in order to make a case against the petitioner, recovery of stick had been planted upon the petitioner. It is submitted that as per recovery memo dated 28.02.2020, recovery of the stick had been made from an area that was 30 meters away from the same place from which the previous recovery had already been effected. It is further submitted that the recovery of an object like a stick can be planted against any person. It is also argued that Ankit who is an co-accused of the petitioner and from whom some

bricks had been recovered, has been granted the benefit of bail vide order dated 08.10.2021, although, the said Ankit was a juvenile.

Learned counsel for the petitioner has relied upon the judgment dated 01.08.2018 passed by the Division Bench of this Court in CRM-A-1065-MA-2016; titled as *Narcotics Control Bureau* v. *Sandeep*; to contend that without there being any conversation details produced on record by the prosecution in the challan, mere factor of calls exchanged between two persons cannot be made the basis to prosecute a person. It is further submitted that since as per the prosecution case, the petitioner and the deceased were known to each other, thus, there being call details between the two, would not be a sufficient ground to deny regular bail to the petitioner. It is further submitted that the petitioner has been in custody since 27.02.2020 and the challan in the present case has already been presented and there are as many as 27 witnesses and none of them have been examined and the trial is likely to take time. The petitioner is not involved in any other case. Therefore, grant of concession of regular bail to the petitioner is prayed for.

Learned State counsel as well as learned counsel for the complainant have opposed the present application for regular bail. It has been submitted that the present case, which is based on circumstantial evidence, is made out against the petitioner and his co-accused Ankit. It is submitted that as per the disclosure statement of the petitioner, he had admitted that the petitioner, co-accused Ankit and the deceased were having liquor together and after the petitioner had gone back home, the deceased had called the petitioner and the petitioner, alongwith Ankit, had gone with the deceased to the forest and after having more liquor, there was a fight

between them on account of which the petitioner and Ankit inflicted injuries upon the deceased Krishan, on account of which Krishan died. It is further submitted that the argument of the learned counsel for the petitioner to the effect that there were only four injuries as per the post mortem report, out of which three were abrasions, would not hold good as it has been stated in the report filed under Section 173 Cr.P.C (Annexure P-3) that the body of the deceased had been eaten by unknown animals and thus, there was a possibility of other injuries having been inflicted by the petitioner and Ankit. However, with respect to the period of custody and the fact that there is no other case against the petitioner, the State counsel and counsel for the complainant have not disputed the same.

This Court has heard learned counsel for the parties and perused the record.

It is not in dispute that as per FIR in question, complainant-Rajbir had stated that his nephew Krishan had been killed by some unknown persons. The present case is not a case of an eye witness account and is based on circumstantial evidence. Primarily, the only evidence connecting the petitioner to the crime is the details of calls made from the mobile phone of the deceased to the petitioner. It is not in dispute that the conversations details with respect to the said calls have not been proved or produced alongwith the challan by the prosecution.

A division Bench of this Court in the case of **Narcotics Control Bureau** (supra) has observed as under:

“Still further, no conversation detail between accused Ramesh Kumar Patil and accused Sandeep has been produced by the prosecution. Mere call details is not sufficient to prove that Sandeep Accused was also involved in the business of narcotic

drugs or he had any connection with Ramesh Kumar Patil.”

In the present case, even as per the disclosure statement made by the petitioner, it is apparent that the petitioner was known to the deceased and thus, whether the petitioner could be linked to the crime on the basis of the said call record without the details of conversations being produced on record, would be a matter of debate during trial. Even as per the disclosure statement of the petitioner, the best case against the petitioner is that the petitioner, co-accused Ankit and the deceased were having liquor together and in fact, the petitioner had gone back and it was the deceased who had called the petitioner again and after having some more liquor, there was a sudden fight. Even as per the same, it cannot be said that there was any motive on behalf of the petitioner to kill the deceased. The pant of the petitioner although stated to have been blood stained as per the disclosure statement of the petitioner, did not have blood stains upon being recovered, however, it had been stated that the same had been washed. Even the question as to whether the injuries which had been caused as per the disclosure statement match with the post mortem report or not, would be a matter of trial inasmuch as per the disclosure statement several injuries were inflicted with the bricks upon the head and body of the deceased, whereas as per the post mortem report, there were four injuries and three out of them were abrasions. The fact that in the report filed under Section 173 Cr.P.C, it had been observed that unknown animals had eaten the body of the deceased, makes the case debatable as to whether the deceased was killed by a man or an animal.

With respect to the recovery of the stick effected from the petitioner on 28.02.2020, the argument of the learned counsel for the

petitioner to the effect that prior to the arrest of the petitioner on 25.02.2020, the entire area had been seen by the police and the recoveries were already effected from the entire area so the recovery of the said stick from the same area on a subsequent date is doubtful, cannot be brushed aside. The petitioner has been in custody since 27.02.2020 and there are as many as 27 witnesses and none of them have been examined. Thus, the trial is likely to take time, moreso, in view of the present pandemic. The petitioner is not involved in any other case.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to his not being required in any other case.

However, it is made clear that in case the petitioner tries to influence and threaten the witnesses, in any manner, the State as well as complainant would be at liberty to move an application for cancellation of bail.

However, nothing stated here-in-above shall be treated as an expression on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

23.12.2021

rajeev

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No