

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6326-2021
Date of decision: 10.03.2022

Gaurav Arora
...Petitioner

Versus

State of Haryana
...Respondent

CRM-M-30026-2021-2021
...Petitioner

Neeraj

Versus

State of Haryana
...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.S. Cheema, Sr. Advocate with
Mr. Karambir Singh Nalwa, Advocate,
Mr. Ishaan Khetarpal, Advocate and
Mr. Sukesh K. Jindal, Advocate
for the petitioner in CRM-M-6326-2021.

Mr. Nikhil Chopra, Advocate
for the petitioner in CRM-M-30026-2021.

Mr. Manish Bansal, DAG, Haryana.

Mr. Rahul Rathore, Advocate
for the complainant.

Mr. Keshav Pratap Singh, Advocate
for the victim.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
329	11.09.2020	Civil Lines, Karnal	302, 307, 34, 120-B IPC

This order shall dispose of two petitions i.e., CRM-M-6326-2021 and CRM-M-30026-2021, as the same have arisen out of common FIR captioned above.

2. The petitioners, incarcerated upon their arrest in the FIR captioned above, had come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.

3. As per the prosecution's case, the police received information that on the intervening night of 10/11.09.2020, two persons, namely Robin (deceased) and Arvind (eye-witness), had received injuries in a roadside accident and have been admitted at Kalpana Chawla Government Medical College and Hospital, Karnal. On receipt of this information, the investigator reached the hospital and enquired from the doctor about the nature of the injuries and ability of victims to give statements. The doctor found the injuries were caused by blunt weapons and declared them unfit to make statements. Meanwhile, the injured Robin was shifted to Arvind Hospital, Karnal. On coming to know about this, the investigator also reached there, where he met Satish Kumar, father of Robin (deceased). The investigator recorded the statement of Satish Kumar under section 154 CrPC. The relevant portion of the same is as under: -

“Stated that I am a resident of the above address, and I run a milk dairy shop. On 10.09.2020 at about 10:40 pm, I, my son Robin and his friend Arvind son of Raman Charan, resident of House No.8, Ram Bagh, near Randhir Cinema, Kunjpura Road, Karnal, were on a stroll after eating food. When we were coming from the side of Haryana Nursing Home towards the New Housing Board, Sector 13, Karnal, my son Robin and Arvind were about 50 paces ahead of me. At about 11:15 pm, a vehicle being driven by some unknown driver at a fast speed and in a rash and negligent manner came from behind and hit my son Robin and his friend Arvind and fled away from the spot, and it could not see the number as it was dark. Then, I removed both to the Kalpana Chawla Hospital, Karnal, with the help of passersby and got them admitted there. They both have suffered many injuries as a result of the accident. If I get to know about the vehicle, I shall inform you. Legal action may be taken against the unknown driver.”

4. Thus, the earliest version of Satish Kumar is that on 10.09.2020 at 10.40 P.M., after taking meals, he, along with his son Robin, and Arvind, a friend of Robin, had gone for a walk towards Randhir Cinema towards Kunjpura Road, Karnal. When they were coming from the side of Haryana Nursing Home towards the New Housing Board, Sector 13, Karnal, his son Robin and Arvind were walking ahead of him. At 11.15 P.M., a car came from behind at high speed, in a rash and negligent manner, and hit both the boys and fled after hitting them. Due to darkness, he could not note down the vehicle's details. However, with the help of passersby, he took the injured Kalpana Chawla Government Medical College and Hospital, Karnal. Later on, Robin expired. Thus, the police registered FIR under Sections 279, 337, 304 IPC.

4A. As regards Arvind, he was subsequently admitted in Gurunanak Hospital and was declared unfit for making statement by the doctor prior to 16.09.2020.

5. On 16.09.2020, the police recorded the statement of the injured Arvind under Section 161 CrPC. He stated that in the year 2014-15, he had started a partnership with Raj Kumar alias Raju Bathla (A-1). They purchased a shop in which both had an equal share. The original sale deed was with Arvind, whereas the shop's keys were with Raju Bathla. They opened Reliance sim store in the shop; however, it had to be closed after 7-8 months. They had an account of Rs.2,50,000/-, which Raju Bathla settled. After that, Raju Bathla and his Sikh friend started a Chicken Corner in the said shop. Later on, that Sikh gentleman also withdrew his share, but Raju Bathla (A-1) ran the shop with Gaurav Pilani (A-2). Whenever Raj Kumar Bathla and Gaurav Pilani would meet him, they would ask him to transfer the shop in their names. Otherwise, it would lead to dire consequences. Around 2/3 months before the incident, there was a Panchayat between him and Raj Kumar Bathla, in which the maternal uncle of Arvind, namely Ram Chander, was also present. However, no result came out of the said Panchayat. Raj Kumar Bathla left the meeting by threatening with dire consequences. Subsequently, Raj Kumar Bathla kept animosity with him and would stare at him from his vehicle. On 08.09.2020 at 10/11 P.M., when he was at home, three persons, namely Gaurav Pilani, Raj Kumar, and Neeraj (A-3), were waiting for him. Since he was on the opposite side of the road, they could not see him. They had a stick or gun in their hands, and they pointed out it towards home and left. On 10.09.2020, he and Robin were taking a stroll and walking on their side towards Khurana Market. Meanwhile, a car came from the backside at high speed and hit both. They fell on the road, but he noticed the number of the car from the rear side, which was HR05-AD-8019, and Raj Kumar Bathla was driving the same. Gaurav Arora was sitting on the front seat, and one person was sitting on the rear seat. Robin Nagpal (Deceased) was lying on the bonnet of the car near the windscreen. At that time, Raju Bathla reversed the car and again drove the same on him and dragged him for a sufficient distance. Gaurav Pilani (A-2), Raj Kumar Bathla (A-1), and Neeraj (A-3) have hit the car intending to kill them.

6. After receiving this information, the police took the CCTV footage from the CCTV cameras. The video footage of the CCTV cameras corroborated that car no. HR05-AD-8019 was found to have been stopped in proximity, and it was circling the area in a slow speed. During the investigation, the police recovered the car from the garage of Neeraj Arora, and it was registered in the name of his wife. Thus, the case got converted from road side accident to that of murder and attempt to murder.

7. The investigation further revealed that Gaurav Arora (A-2) and Neeraj Arora (A-3) had talked to each other on 11-9-2019 at 7.49 P.M. The police obtained call details of Neeraj to corroborate the same as per which Neeraj Arora (A-3) had called from his SIM

Gaurav Arora (A-2). After the accident, all three were allegedly together in Yamuna Nagar and from there they went to Amritsar. Subsequently the investigator arrested all the three accused on 16-9-2019, and are behind bars.

8. Mr. R.S.Cheema, Ld. Sr. Advocate appearing for A-2 Gaurav Arora argued that the petitioner had no motive to commit the offence. At the time of the incident, the wife of Gaurav was expecting. She gave birth on 18-09-2021 (Birth certificate Annexure P-9) and since his wife was likely to deliver, there was no reason for him to indulge in such a heinous offence; given his education and his position in a corporate job. Ld. counsel submitted that even per the statement of Arvind, recorded u/s 161 CrPC, due to the vehicle's impact, which had hit them from behind, he had fallen, and Robin got struck upon its bonnet. Arvind alleges to have noticed the registration no. of the car from its back and saw that Raj Kumar Bhatla (A-1) was on the driver's seat and Gaurav Arora (A-2) was on the front seat adjacent to the driver. He also observed a third person sitting in the car's back seat but could not recognize him. After that, the car was reversed and again ran over Arvind. Ld. counsel submits that the time of the incident was 11.15 P.M., and Arvind had fallen due to impact. As such, he had no occasion to notice the number or able to recognize persons sitting on the front seat from the back seat. For this very reason, the investigator concocted the unfit statement, that too without any proper applications made to the doctors. After deliberations, he recorded Arvind's statement four days after the incident. Ld. Counsel further argued that after the incident, there is no evidence of call location of Gaurav either at Yamuna Nagar or at Amritsar. Ld. counsel further submitted that instead of getting call details reports qua the phone no. 9896994544, the Investigator took call details of phone no. 9896994554. The alleged discovery of the number plate of the car is from the joint statement of all the three accused, which is legally inadmissible. Thus, the evidence collected against Gaurav does not connect him with the commission of the said offence.

9. Mr. Nikhil Chopra, Ld. Counsel for the petitioner Neeraj A-3, argued that the petitioner had no motive to commit the offence; the car in question is registered in the name of the wife of Neeraj, with whom he had estranged relations; and call details are insufficient to connect him with the crime. Another argument of the learned counsel for the petitioner is that the story was overturned, and a case of accident was converted into a case of murder. There was nothing to show that Arvind was not in reasonable mental condition, and the doctor's statement, declaring him unfit, is without any application of mind or seeking any opinion. He has further argued that a *prima facie* perusal of the doctor's statement regarding the consciousness of Arvind is highly doubtful, and in fact, the statement of Arvind under Section 161 CrPC is the

10. Mr. Manish Bansal, learned counsel appearing for the State of Haryana contended that the crime resulted from a well-planned conspiracy. The contention on behalf of the State is that all the three accused, who are close friends, hatched a conspiracy and committed the murder and attempted murder. Ld. counsel argued that the evidence collected by the police against Neeraj is that the car No.HR005-AD-8019, which was used to run over Robin and Arvind; and the said car was registered in the name of his wife. There is sufficient evidence, and none of the accused deserves bail during the trial. Ld. counsel further submits that the complainant and other material witnesses are yet to be examined. Ld. counsel for the complainant also endorses the States' view.

REASONING:

11. As per the initial FIR, which was registered on the statement of Satish Kumar, (father of Robin), he had stated that he was also walking with Robin and Arvind, but at the time of the accident, he was 50 meters behind. It is undisputed that as per the initial version of the FIR, which is based on the statement of Satish Kumar, the FIR was for a roadside accident. However, being a father of an injured in serious condition, it will be inappropriate to comment on his mental state of mind at that point in time. Whether the subsequent supplementary statement of Satish Kumar was tutored or influenced at the end of some person has to be appreciated during evidence, and this Court would refrain and restrain itself from deriving any adverse opinion at this stage. What evidentiary values are to be attached to the fitness certificates of the victims is a subject matter of trial and not of bail. As far as delay in recording the statement of Arvind is concerned, the same is also subject to his credibility in trial and this is not a proper stage to comment upon.

12. The common evidence emerging from the statement of Arvind against all three accused is that on 8-9-2019, the injured had noticed A-2 Gaurav and A-3 Neeraj traveling along with A-1 Raj Kumar in a jeep.

13. The investigation found that Gaurav Arora and Neeraj Arora had talked to each other on 11-9-2019 at 7.49 P.M. The police obtained call details of Neeraj to corroborate the same as per which Neeraj Arora had called from his phone number no. 8168723964 to the phone no. 9896994544 of Gaurav Arora. The subsequent evidence is their joint statement under which the police discovered the car's number plate.

14. The evidence against Gaurav Arora (A-2) is that he was a partner of Raj Kumar (A-1). Furthermore, Arvind noticed Gaurav sitting in front of the Swift car, driven by Raj Kumar (A-1).

15. Regarding the absence of motive, Arvind claims to have seen all the three accused together in a Jeep on Sep 8, 2019, i.e., two days before the incident.

16. The fact that the wife of Gaurav was expecting and likely to deliver in those days (as seen in Annexure P-9), there was no reason for him to indulge in such a heinous offence; given his education and his position in a corporate job, cannot be considered as a sure-shot response of every father expecting a baby; as it is highly subjective and would vary largely from person to person, some love war and crime, others make efforts to impart education, medicare, raising standards of living and peace. Humans are different and have unpredictable behavior, as an outcome of their varied environments and innate tendencies.

17. The exclusive evidence against Neeraj is that the Swift car, recovered from his garage, had the tell-tale signs of an accident. As per counsel for the accused Neeraj, the car is registered in the name of Neeraj's wife. Therefore, he is not answerable to explain the car and its condition, as he had estranged relations with his wife. This, in fact, seems an additional reason because he might probably be trying to kill two birds with one stone. Any further discussion is likely to prejudice the case of the accused; as such, this observation shall not be considered an admissible expression in the trial or appeal.

18. Regarding other arguments, for the purpose of bail, the *prima facie* value of the statement of an injured witness is to be seen. The CCTV footage *prima facie* records the movement of the Swift car with its registration number legible. Thus, it shall be inappropriate to discredit the version of an injured witness at the bail stage without allowing him to explain his stand during cross-examination.

19. Although the contention of Ld. counsel appearing for A-2 Gaurav is valid that instead of getting call details, reports qua the phone no. 9896994544, the Investigator took call details of phone no. 9896994554, but its advantage cannot be given to the accused at this stage. In the affidavit dated 9-11-2021, the Dy. Superintendent of Police, Karnal explicitly deposed that no tower location is available for more than one year. It is for the higher officers to look into this lapse and to decide on setting their house in order, and this Court refrains from commenting any further, nor is it directing to do so.

20. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for bail at this stage. However, it shall be open for the petitioners to file fresh bail applications in changed circumstances or after recording the statements of witnesses other than official and formal witnesses, whichever is earlier. The dismissal of this petition shall not come in the way while considering the fresh petition(s).

21. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

Petitions dismissed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

March 10, 2022
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.