

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I.**CRM-M-7359-2021**

Date of decision: May 06, 2022

Om Parkash @ Kala

...Petitioner

Versus

State of Haryana

...Respondent

II.**CRM-M-18097-2021**

Rajesh @ Raja

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWANPresent:- Mr. Sandeep Saini, Advocate
(in CRM-M-7359-2021)Mr. Vishal Garg Narwana, Advocate
(in CRM-M-18097-2021)
for the petitioner(s).

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in the above mentioned two petition is for grant of regular bail to petitioners, namely, Om Parkash @ Kala and Rajesh @ Raja in case FIR No.34 dated 25.3.2020 under Sections 346 IPC (under Sections 302, 34, 201, 404 IPC and Section 25 of the Arms Act added later on), registered at Police Station Alewa, District Jind.

Counsel for the petitioner(s), at the very outset, has relied upon the order dated 19.3.2021 passed in CRM-M-11574-2021 (Annexure P-3) vide which one of the co-accused-Sukhwinder Singh was granted the concession of regular bail. The operative part of the said order reads as under :-

“Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of Raghbir, his son namely Rajeev had gone out of the house but did not return back and both his mobile numbers were switched off. The FIR was registered under Section 346 IPC. Thereafter, the complainant moved another application before the police authorities on 14.04.2020 i.e. after about more than 20 days wherein he has raised a suspicion on co-accused Rajesh @ Raja by saying that on the date of incident, when he had gone out of the house, he had seen a white colour car bearing registration No.HR-31-L-1283 stopped outside his shop and Rajesh @ Raja was driving the same and his son Rajeev also sat down in the car and both of them ran away as his son Rajeev Sharma and the co-accused Rajesh @ Raja had a dispute regarding the money of rendition of account regarding the liquor vends and on that account, Rajesh @ Raja has committed the murder of his son Rajeev. Counsel for the petitioner has then referred to another complaint given by Karesani, wife of the complainant Raghbir i.e. mother of the deceased Rajeev, on 30.04.2020 in which further improvements were made and it is stated that when

the car came outside their house, she had seen that Rajeev along with the petitioner Sukhvinder and another co-accused Kala, were present and when his son sat in the car, they went away and in this complaint also, it is specifically stated that her deceased son has a dispute with the co-accused Rajeev regarding payment of Rs.1.00 lac on account of the liquor vends and due to this reason, all the accused persons have committed the murder of the deceased Rajeev. Counsel for the petitioner has also submitted that challan under Section 173 Cr.P.C. has already been presented and the petitioner is in custody for the last about 10 months and it will take some time in conclusion of the trial. Counsel for the petitioner has, thus, argued that by making improvements on two occasions, the petitioner has been nominated in the FIR, after a long lapse of about more than 01 year and 10 days. Counsel for the State has not disputed the factual position regarding the two supplementary statements made, vide which petitioner was nominated in the case, but opposed the prayer for bail."

For the sake of brevity, the facts are not reproduced.

Counsel for petitioner Om Parkash @ Kala has argued that he was not named in the FIR dated 25.3.2020, which was registered after 04 days of missing of deceased Rajiv. Counsel has further submitted that after 35 days, i.e. on 30.4.2020, the complainant made a

supplementary complaint that accused, namely, Rajesh @ Raja, Sukhwinder @ Kidu and Om Parkash @ Kala are the accused persons.

Counsel for the petitioner has further argued that after the arrest of the petitioner on 4.5.2020, the police recorded his disclosure statement in which the petitioner has stated that he has not caused an injury to the deceased. The deceased was a partner with the co-accused in a liquor business. Counsel has also submitted that during the police investigation, nothing has come on record that there was any partnership deed between the deceased and the co-accused or any document to show that they were having a joint liquor business.

Counsel for petitioner Rajesh @ Raja has argued that there is delay of 04 days in registration of the FIR as deceased Sanjeev has left his hosue on 21.3.2020 and FIR was registered on 25.3.2020. Even, petitioner Rajesh @ Raja was not named in the FIR and on 14.4.2020 the complainant has given an improvised version to the police by giving a complaint that on 21.3.2020 when he was present in his house at 9.00 p.m. he has seen a white colour car stopped in front of his house, which was driven by petitioner Rajesh @ Raja and Sanjeev has gone with him and that the petitioner and one Shamdo has committed the murder of Sanjeev.

It is stated that again another complaint was made on 30.4.2020 by the son and wife of complainant regarding involvement

of co-accused Sukhwinder @ Kidu and Om Parkash @ Kala. Counsel has further submitted that in view of the different versions, the case of the prosecution is doubtful. It is next argued that as per the post-mortem report, regarding injury No.2, no foreign body was seen inside the cranial cavity and in the FSL report 'Diatom' were detected in Ex.2 (water sample). However, 'Diatom' could not be detected in Ex.1 (Femur). Counsel has further submitted that it will be matter of trial whether the injury sustained by the victim were, in fact, fire arm injury.

Counsel for the petitioner has next argued that though the police has recovered the tower location and call details of mobile number of the deceased and the accused, however, in investigation nothing has come that any call was made by the petitioner to the deceased within the same tower location.

Counsel for the petitioner(s) have further argued that petitioners are in custody for the last 01 year, 04 months and the statement of the complainant has already been recorded, therefore, there is no possibility of tampering with the prosecution evidence.

Reply by way of affidavit dated 17.7.2021 of the SHO, Police Station Sadar Saffidon, District Jind is on record and as per the same, after verifying the facts in the FIR, it is stated that during investigation on 28.3.2020, an unidentified dead body was recovered from the

ditches near the Butana Branch Canal and DDR No. 15 dated 28.3.2020 was recorded and proceedings under Section 174 Cr.P.C. were initiated. The dead body was identified by Sandeep. Later on, on 8.4.2020, complainant-Raghubir @ Bhira recorded his supplementary statement, which is noted above.

Thereafter, the DNA examination was conducted and accused persons were arrested. In the disclosure of petitioner Om Parkash @ Kala and Rajesh @ Raja, it was admitted that they actively participated in commission of offence and a pistol of .315 bore was recovered. Petitioner-Rajesh @ Raja, who was lodged in some other case in jail was taken in production warrants and certain recoveries of clothes and money was effected.

Learned State counsel, on the basis of custody certificate, could not dispute that petitioner-Om Parkash @ Kala is in custody for the last 01 year, 11 months and 28 days and Rajesh @ Raja is in custody for the last 2 years and 01 day. However, the fact that the petitioners are involved in other cases, therefore, the bail should not be granted.

After hearing learned counsel for the parties; considering the fact that the petitioners are in long custody; statement of complainant-Raghubir Singh @ Bhira has already been recorded and also in view of the fact that there are two successive supplementary

statements adding the accused persons as well as some variation in the ocular and medical version, both the above mentioned petitions are allowed and petitioners, namely, Om Parkash @ Kala and Rajesh @ Raja are directed to be released on bail, subject to their furnishing bail/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate.

May 06, 2022
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**(ARVIND SINGH SANGWAN)
JUDGE**

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