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

**CRM-M No.10182 of 2022
Date of Decision: 19.05.2022**

PRADEEP KUMAR

.....Petitioner

Vs

STATE OF HARYANA

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Inder Singh, Advocate and
Mr. Nitin Sachdeva, Advocate
for the petitioner.

Mr. Pankaj Mulwani, D.A.G., Haryana.

Mr. Ram Bilas Gupta, Advocate
for the complainant.

RAJ MOHAN SINGH, J.

[1]. Petitioner seeks grant of regular bail in his second attempt under Section 439 Cr.P.C in case bearing FIR No.250 dated 30.08.2019 registered under Sections 363 and 366-A IPC (Sections 302, 201, 120-B IPC added later on) at Police Station Kheri Pul, Faridabad.

[2]. Perusal of the record would show that the FIR in question was registered at the instance of Ajab Singh. As per prosecution case, daughter of the complainant had gone to

purchase some goods from a nearby grocery shop and thereafter, she did not return back home. The FIR was registered against unknown persons, who might have taken away daughter of the complainant namely Nikita with some ulterior motive of marrying her.

[3]. Learned Senior counsel for the petitioner submits that the petitioner has been implicated on the basis of extra-judicial confession made before Kuldeep Singh (PW-3). Extra-judicial confession is a weak type of evidence. The police has recorded two confessional statements of the petitioner which are inadmissible in law.

[4]. Learned Senior counsel further submits that during course of investigation, the petitioner and co-accused Waseem were arrested on 10.09.2019 and dead body of Nikita was shown to be recovered at the instance of the petitioner and co-accused Waseem. In view of disclosure statements made by the petitioner, the recovery of dead body was effected and the recovery memo did not bear signature of the petitioner. According to learned Senior counsel the alleged identification of the place of recovery would remain debatable as per Evidence Act as the fact was already in the knowledge of the police and the same would not give rise to any such admissible piece of evidence *qua* the alleged place of recovery. Co-accused Amar

Singh was arrested on 12.09.2019. The FIR was a blind FIR, therefore, the prosecution ought to have conducted test identification parade before the *Illaq*a Magistrate at the time of production of the accused before the Court.

[5]. Learned Senior counsel further submits that no recovery has been effected from the petitioner, therefore, no motive can be attributed. Petitioner is in custody since 10.09.2019. The material witnesses have already been examined and there is no chance of tampering with the prosecution evidence in any manner. Out of total 42 prosecution witnesses, only 8 witnesses have been examined so far and the next date of hearing before the trial Court is 25.05.2022.

[6]. Learned Senior counsel by referring to the statements of PW-2 and PW-3 seeks to plead contradictions in the prosecution story. In case of extra-judicial confession, the person before whom extra-judicial confession was made was required to tell the fact immediately to the family members of the deceased and in the absence thereof, the person before whom extra-judicial confession was made cannot be presumed to be a man of authority. In case of defective extra-judicial confession, the same is liable to be rejected and benefit would accrue to the petitioner. At the time of rejection of earlier petition i.e. CRM-M No.10539 of 2021 on 05.04.2021, the aforesaid statements of

PW-2 and PW-3 were also attached with the main petition and this Court took notice of the fact that the material witnesses have been examined in para no.4 of the order passed in the aforesaid petition.

[7] Per contra, learned State counsel assisted by learned counsel for the complainant submits that as per material available on record, Nikita was murdered by the petitioner and her dead body was placed in a pit near Bank of Yamuna in order to destroy the evidence. The dead body of Nikita was recovered from Bank of Yamuna near Kaptan Farm House on the demarcation of the petitioner. Nikita was murdered by the petitioner on the asking of the co-accused. As per disclosure statements of the petitioner dated 10.09.2019 and 11.09.2019, he was having some affair with the deceased and she started pressurizing the petitioner for marriage. On 29.08.2019, the petitioner contacted co-accused Amar Singh who also called Waseem. Thereafter, all the three hatched a conspiracy and in pursuance thereof, went to Kaptan Farm House for finding an appropriate place. On 30.08.2019, the petitioner called Nikita and picked her in a car and then strangulated her. Thereafter, the petitioner called Amar Singh on phone. Amar Singh and Waseem came to master road near Tikawali. Thereafter, all the three sat in the car for disposing the dead body. All the three

went to Yamuna Bank and dug a pit and thereafter, dead body was buried in that pit. In the disclosure statement dated 11.09.2019, the petitioner disclosed that on reaching Tikawali, dead body of Nikita was lying on the rear seat of the car. Amar Singh and Waseem had come at that time in a car, which was parked by Amar Singh at Tikawali Mor and thereafter, Amar Singh sat on the front seat of the car of the petitioner and Waseem sat near dead body on the rear seat. Thereafter, all the three reached Bhupani Mor and on the asking of the petitioner, Amar Singh purchased two *Kassi(s)* and put them in the car. Thereafter, all the three reached in front of Kaptan Farm House near Bank of Yamuna. Petitioner and Waseem dug a pit. Amar Singh was keeping a watch on the surroundings. Petitioner by holding hands of Nikita's dead body and Waseem by holding her legs, put the dead body in the pit. Petitioner took two stones from there and put them on the dead body. Waseem took a cloth from the car and put on the face and upper part of the dead body of Nikita. In this manner, dead body of Nikita was buried. Thereafter, they put the *Kassi(s)* in the car and came back to Faridabad. While coming back, the car was driven by Amar Singh. Petitioner was feeling uneasy. On 04.09.2019, petitioner got his car hit into trolly near BPTP and got himself admitted in Metro Hospital in order to get himself saved from the arrest.

[8]. Learned Senior counsel for the petitioner again by rejoining the arguments submits that preparation of CD cannot be termed to be primary evidence in view of Section 62 of the Evidence Act. The electronic record cannot be admitted directly by way of secondary evidence without compliance of Section 65-B of the Evidence Act. Co-accused Amar Singh has been granted regular bail by this Court vide order dated 27.11.2020 passed in CRM-M No.12611 of 2020.

[9]. According to learned State counsel duly assisted by learned counsel for the complainant, petitioner is the prime accused. His disclosure statements have led to recovery of dead body. The criminal conspiracy is an act which involves *mens rea* i.e. mental state of the accused.

[10]. The case of the petitioner cannot be equated with co-accused Amar Singh in terms of his role because Amar Singh joined the petitioner later on and by that time, Nikita had already been murdered by the petitioner. Amar Singh joined the petitioner only in terms of Section 201 IPC for the purpose of destroying the evidence.

[11]. Since the earlier petition for regular bail was dismissed on merits, therefore, at this stage, without forming any opinion on the merits of the case, it would not be proper to grant any indulgence for grant of regular bail. Incriminating allegations and

defence thereof would be adjudged by the trial Court on the basis of material available on record.

[12]. For the reasons recorded hereinabove, I do not see any justification to grant regular bail to the petitioner on parti with the co-accused Amar Singh. Present petition is found to be devoid of merits and the same is accordingly dismissed.

[13] Nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

May 19, 2022

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No