

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-16422-2022

Date of Decision:-15.07.2022

Mohinder & Anr.

.....Petitioners.

Versus

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. KDS Hooda, Advocate for the Petitioners.

Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.223 dated 03.05.2021 under Sections 302, 34 IPC later on added Section 201 IPC registered with Police Station Pundri, District Kaithal.

The brief facts of the case are that the present FIR came to be registered at the instance of Pawan Kumar son of Sultan Singh who stated that he was a resident of Bakal, Police Station Pundri and was in the business of tyres. They were two brothers and a sister. His younger brother Vijay Kumar was also in the same business of tyres. Both the brothers were presently residing in separate houses in Chandigarh. His younger brother had come to village Bakal for the last 06 days and on 03.05.2019 he received information that his brother had expired and his dead body was

lying near the fields of Leela. When he reached the spot, he saw that his brother had injury marks on his head, forehead and neck with a sharp edged weapon. An Activa Scooter was lying near his body. He stated that his brother had been murdered by some unknown persons.

Since it was a case of blind murder, the statement of the mother of the deceased Vijay was recorded to the effect that she suspected that the offence had been committed by one Om Parkash @ Bagri. The said Om Parkash was arrested and he suffered his disclosure statement. As per the said disclosure statement, he and the deceased were residing in the fields and would consume liquor daily. On 02.05.2021 they both had an altercation with each other. He called his relative Mohinder (present petitioner) from his mobile phone informing him that the deceased was abusing him and that Mohinder should take the deceased away from him. Thereafter the deceased Vijay Kumar also called up Mahinder (the petitioner) regarding the quarrel. However, since the deceased did not stop abusing him. He gave an iron blow on the head of the Vijay Kumar who died at the spot. He attempted to conceal the body in the fields of Fodder. Thereafter he contacted the petitioner who told him that no one had suspected him.

Based on the aforementioned disclosure statement, the petitioners were arrested and they suffered similar disclosure statement with the additional fact that they had concealed the dead body at a place where it was subsequently found in order to protect themselves as the deceased had actually been done to death in their fields and they feared that they would be implicated in his murder.

The Counsel for the petitioners submits that there is absolutely

no evidence whatsoever against the petitioners. Even going by the confessional statement which is otherwise inadmissible in evidence the offence was committed by Om Parkash who caused the death of the deceased on account of a trivial issue on an altercation after consuming liquor. The petitioners are said to have come to the spot later on and had absolutely no role to play in the commission of the offence. Taking the prosecution case to be absolutely correct, the petitioners could only be inculpated for having committing the offence under Section 201 IPC if at all. There was absolutely no motive with the petitioners to commit the offence in question. He contended that the petitioners are in custody since 05.05.2021 and 07.05.2021 respectively. Only 02 out of 24 prosecution witnesses have been examined and as the trial was not likely to be concluded in near future, the further incarceration of the petitioners is not required.

The Counsel for the State on the other hand has very fairly and candidly admitted that other than the disclosure statement of Om Parkash and their own disclosure statements, there is no other evidence against the petitioners and infact the evidentiary value of the disclosure statements would in any case have to be examined during the course of trial. He however, opposes the bail application on account of the fact that a very serious offence had been committed and petitioners do not deserve the concession of bail.

I have heard rival contentions of both the parties at length and examined the record.

As has been submitted by the counsel for the petitioners and borne out from the report under Section 173(2) Cr.PC, other than the

disclosure statement of Om Parkash and the two petitioners, there is no evidence available on the file as on date. Even otherwise it would be matter of adjudication before the trial Court as to whether the offence is made out against the petitioners. The petitioners have been in custody since 05.05.2021 and 07.05.2021 respectively. Only 02 witnesses out of 24 witnesses have been recorded so far and, therefore, the trial is not likely to be concluded in near future.

Thus without commenting upon the merits of the case, the present petition is allowed and the petitioners **Mohinder** son of Sh. Zile Singh and **Rajender** son of Sh. Deva Ram are ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate concerned.

It is further made clear that if petitioners indulges in similar offence for which they are currently charged, the State would be at liberty to move an application for cancellation of bail.

Nothing observed herein shall be taken as an expression of an opinion on the merits of the case and the trial Court shall decide the case based on the evidence lead before it uninfluenced by any observations made herein above.

(JASJIT SINGH BEDI)
JUDGE

July 15, 2022
Vinay

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