

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

Decided on: 02.04.2022

1. CRM-M No.13524 of 2020 (O&M)

Sunil

....Petitioner

Versus

State of Haryana

....Respondent

2. CRM-M No.26782 of 2020 (O&M)

Naveen Sharma @ Golu

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. A.P.S. Deol, Sr. Advocate
with Mr. Amardeep Singh Sheoran, Advocate
for the petitioner (in CRM-M-13524-2020)

Mr. Keshav Pratap Singh, Advocate
with Mr. Anmol Puri, Advocate
and Mr. Sukhsandesh Singh Chahal, Advocate
for the petitioner (in CRM-M-26782-2022)

Mr. Deepak Grewal, DAG, Haryana.

Mr. Sunil Kumar Pandey, Advocate
for Mr. Jai Singh Yadav, Advocate
for the complainant.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in these petitions is for grant of regular bail to the petitioners namely Sunil and Naveen Sharma @ Golu under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.82 dated 11.02.2019, for offence punishable under Sections 302, 201, 364, 120-B, 34 of the Indian Penal Code, 1860 (in short 'IPC') registered at

Police Station Model Town, District Rewari.

Learned senior counsel for the petitioner has argued that the petitioner Sunil is in custody for the last 02 years, 10 months and 22 days whereas the petitioner – Naveen Sharma is in custody for the last 02 years, 01 month and 17 days and almost 10 private witnesses out of 36 PWs have already been examined and some of them are not appearing despite issuing of summons and warrants by the trial Court.

Learned senior counsel for the petitioner has further submitted that as per the allegations in the FIR, registered at the instance of Santosh, mother of the deceased Rupesh, it is stated that Rupesh was unmarried and on 03.09.2019, he has left his home on a motorcycle. On 07.02.2019, Priyanka told her mother that Rupesh is residing with Anita daughter of Devanand, in Rewari and Anita made a telephone call to her that since 06.02.2019, Rupesh is missing. Prior to this, Asha wife of Raju told her that Rupesh is residing with Anita and both of them wanted to perform marriage. On an enquiry made at their own level, she came to know that Rupesh at about 10:00 PM on 06.02.2019 had left from the rented accommodation of Anita by taking the Scooty of her friend Manish for purchasing eggs, however later on, neither he returned back to the room of Anita nor to the home of the complainant. She raised a doubt that someone has kidnapped him and he should be searched. It is submitted that on the next day i.e. on 07.02.2019, the dead body of Rupesh was found on a Railway track and the police initiated the proceedings under Section 174 Cr.P.C. and thereafter, on suspicion that he has been murdered by the accused persons by strangulation and his dead body was kept on the Railway

track, the offence under Section 302 IPC was added.

Learned senior counsel for the petitioner has further submitted that when the post-mortem of the dead body was conducted on 10.02.2019, under Column No.4 of External Appearance regarding marks of ligature on neck, it was reported as under:-

“4) Marks of ligature on neck dissection etc.

- Head from body from neck is amputated at c-5-c6 level with lacerated wound.*
- Right hand is amputated from shoulder with lacerated wound.*
- Left lower part of body amputated from hip region with crushed Genital organs.*
- Left leg is amputated from hip region with crushed.*
- There is multiple piece of body are present with multiple fractures of bones and multiple lacerated wounds with Blackish Greezy material present in that part. Tounge protruding out from mouth.*
- Both pupils are fixed and not reacting to light.”*

Learned senior counsel for the petitioners has also submitted that later on, the police again sought an information from the doctor regarding the post-mortem dated 10.02.2019 by raising certain points. The operative part of the said report and the opinion given by the doctor, reads as under:-

“It is submitted that in above stated case, on 07.02.19, on finding unidentified dead body of deceased Rupesh s/o Azad Singh caste Ahir r/o Luhana PS Khol Distt. Rewari near Giriwas Railway Crossing in the area of PS Khairthal, proceeding u/s 174 Cr.P.C. was conducted regarding unidentified dead body vide DDR No.27 dtd 10.2.19 PS Khairthal by the police of District Alwar, Rajasthan and its post mortem was got conducted

and its PM Report No.32 dtd 10.02.19 was prepared by you. In which, the cause of death has been opined as Shock due to haemorrhage. Death is within 24-36 hours. That during investigation of present case it has been disclosed to be the case of abduction with the purpose of committing murder. During investigation, Sunil Kumar s/o Kanwar Singh caste SC r/o Jonawas PS Dharuhera District Rewari and Manisha w/o Sanjay Caste Jat r/o Jhabua PS Bawal District Rewari at the of their arrest on 20.02.19 and in their disclosure have disclosed that on 06.02.19, above Sunil in connivance with his accomplice Kismat and Bholu abducted Rupesh from Rewari and took him near Giriwas Railway crossing Khairthal and there they murdered him by strangulating his neck with data cable and pressing it with hands and placed his dead body on nearby railway track with intention to destroy evidence. In the presence of culprits, the train ran over the dead body of Rupesh and cut it into pieces. On 20.02.19, the dead body was identified as that of Rupesh. As per post mortem report, opinion may be given about the duration between post mortem and death and whether the death of Rupesh could be due to strangulation with data strangulation before running over by train.

*Sd/-
PS Model Town Rewari,
Dt. 21.05.19*

21.05.19 at 8 AM

- 1. Death prior more than 72 hours.
Sorry and human error due to OPD Patients.*
- 2. As the neck of deceased was cut by train, no ligature marks were seen on it. Thus no definite opinion can be given whether death was due to strangulation by data cable and hands.*
- 3. No opinion can be given regarding whether death occurred prior to running over by train because the neck*

was completely severed from body. In brain also, there was no such change is seen.”

Learned senior counsel for the petitioners has further submitted that with regard to the time, it is reported that the death has occurred prior to 72:00 Hrs. at Serial No.2, it is stated that the neck of the deceased was cut by train and no ligature marks were seen and therefore, no definite opinion was given whether the death was caused due to strangulation with data cables or not. On Point No.3, it is stated that in brain also, there was no such change were seen to given an information whether the death was caused due to strangulation.

It is, thus, argued that the prosecution version that the deceased was strangled and then, his dead body was kept on the Railway track is not supported by the medical version.

Learned senior counsel for the petitioners has then referred to statement of PW-1 to PW-10 to submit that PW-1 Vijaypal has not supported the prosecution version and he was declared hostile and similarly, PW-2 Hukam Chand has also not supported the prosecution version. This witness was a neighbour of Anita and had seen somebody driving the Scooty. In cross-examination of both these witnesses, they have not supported the version given to the police. It is further submitted that PW-3 Vinod Kumar, during the identification of Manisha, has stated that he cannot say that she was the lady who has parked the Scooty and this witness was also declared hostile.

Learned senior counsel for the petitioners has then, referred to statement of PW-5 Anita, who was also declared hostile as she do not know any person by the name of Rupesh or Priyanka and

even did not support the prosecution version in the cross-examination conducted by the Public Prosecutor.

Learned senior counsel for the petitioners has thereafter referred to the statement PW-6 Priyanka Bhati, who has also not supported the prosecution version. Similar is the statement of PW-7 Dhana Ram Bhati, who was also declared hostile. PW-8 Sanjay Bhati though, has given the version as narrated in the FIR, however, he is not a witness to the incident as he has stated that at night, Kismat, Sunil and Bholu along with PW-8 had drinks and snacks and at around 01:30 AM, Manish had returned to the flat. PW-9 Asha was also declared hostile and did not support the prosecution version. Similar is the statement of PW-10, who has also not supported the case of the prosecution.

Learned senior counsel for the petitioners has then referred to the statement of PW-4 Dr. Narinder Singh, Medical Officer, who has conducted the post-mortem, has stated that in his opinion the cause of death was shock due to hemorrhage and further proved the opinion given by him as reproduced in the earlier part of this order.

Learned senior counsel for the petitioners has further submitted that the motive given in the case as per the disclosure of the petitioners is that Anita was having some property and the accused persons wanted to purchase it and on that account, they had committed the murder of Rupesh, however in the disclosure statement of the petitioners, nothing has come that they had any motive to commit the murder of Rupesh as he was not the owner of the property and there is no allegation that Rupesh was restraining Anita from selling the property or had instigated her in any manner.

Reply by way of affidavit of the Deputy Superintendent of Police, Rewari, is on record in which after verifying the contents of the FIR and investigation, with reference to the disclosure statement of the petitioner, it is stated that the petitioner has disclosed that Kismat, Vikram, Sunil and Bholu have taken Rupesh near the Railway line at an abundant place and killed him with auxillary/data cable by strangulation and kept the dead body on the track.

It is submitted that except for the own disclosure statement of the petitioner, there is no other evidence to prove the said fact and in the statement of the doctor as well as in the opinion given, it is not specific that the deceased was strangled prior to his death on account of running away by the train.

Counsel for the complainant has also argued that the allegations against the petitioners are serious in nature and therefore, he is not entitled to bail.

After hearing the learned counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioner Sunil is in custody for the last 02 years, 10 months and 22 days and the petitioner – Naveen Sharma is in custody for the last 02 years, 01 month and 17 days; out of 36 PWs, 10 PWs have already been examined; all the material witnesses except two who are not appearing before the trial Court have already been examined and only the official witness remain to be examined and also in view of the fact that the medical evidence on record, both these petitions are allowed and the petitioners namely Sunil and Naveen Sharma @ Golu, are directed to be released on bail subject to their furnishing bail/surety bonds to the

satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case they are found involved in any other case or misusing the concession of bail, in any manner.

A photocopy of this order be placed on the file of other connected case.

(ARVIND SINGH SANGWAN)
JUDGE

02.04.2022
yakub

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