

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRM-M-20818-2021 (O&M)**

DATE OF DECISION: FEBRUARY 15, 2022

RAJESH ...PETITIONER

VERSUS

STATE OF HARYANA ...RESPONDENT

2. **CRM-M-12332-2021 (O&M)**

RAHUL ...PETITIONER

VERSUS

STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. S.P. ARORA, ADVOCATE AND
MR. HIMANSHU ARORA, ADVOCATE
FOR THE PETITIONER IN CRM-M-20818-2021.

DR. DEIPA SINGH, ADVOCATE
FOR THE PETITIONER IN CRM-M-12332-2021.

MR. BHUPENDER SINGH, DAG, HARYANA.

MR. LAJPAT RAI SHARMA, ADVOCATE
FOR MR. VIVEK KHATRI, ADVOCATE
FOR THE COMPLAINANT.

MANOJ BAJAJ, J.(ORAL)

CRM-5294-2022

Statement of PW Krishna dated 26.10.2020, is taken on record.

CRM is allowed.

MAIN CASE

Petitioners have filed their respective petitions under

Section 439 Cr.P.C. for grant of regular bail pending trial in case FIR

No.0306 dated 15.6.2020, under Section 302, 120-B, 34 IPC, Police Station Urban Estate Hisar, District Hisar, who are in custody since their arrest in June, 2020.

The allegations contained in the FIR as noticed by the Addl. Sessions Judge-cum-Special Court for Heinous Crime against Women, in the order dated 24.12.2020, are as under:-

“The present case has been registered on the statement of complainant Ramesh Kumar son of Inder Singh and in brief he alleged that his mother Satbiri Devi (deceased) was living with him in a rental accommodation and his brother Rajesh (present petitioner-accused) lived separate from him and his mother in house No.491, Urban Estate, Hisar. The complainant’s mother is having 2 acres of land in village Tokaspattan, one house bearing no. 491 in Urban Estate, Hisar and one plot in Sector 27-28, Hisar. There was a dispute since 2018 regarding property in between the deceased and the present petitioner. On 14.06.2020, in the evening at 07:30 pm, complainant went to Sector 1-4 due to some work, he received telephonic call from his wife at about 09:00 pm that his mother (deceased) was walking with one Krishna in Urban Estate and two boys attacked her with knife blow. Complainant reached at his house and his wife told him that the deceased was shifted to Jindal Hospital. Krishna also told the complainant that when she and deceased Satbiri were walking in a street of Urban Estate at about 08:30 pm, suddenly, near Tarun Coaching Centre, two boys came on motorcycle and attacked on Satbiri with bluet fire and also one boy attack with knife, due to which deceased fell down. On 14.06.2020 at about 10:00 pm, Satbiri died during treatment in the Jindal

Hospital. Complainant alleged that her mother has been killed by two unknown persons and he has doubt that his mother has been killed at the instance of his brother Rajesh (present petitioner). He also alleged that some other persons may also be involved.”

Learned counsel for the petitioners have argued that as per the complainant, his mother was murdered by two unknown accused persons, and later on four accused persons namely, Rajesh, Rahul, Sunny and Anil were implicated as the complainant had suspected involvement of his brother (Rajesh) in the crime. According to learned counsel, the gun-shot and knife injuries were given to the victim by accused Sunny and Anil, whereas and the petitioners have been implicated on the strength of criminal conspiracy. They have argued that the complainant is the real brother of Rajesh (petitioner) and they both are having old dispute between them, who are having multiple litigations against each other. It is further pointed out that the only eye witnesses, namely, Krishna (PW-1) and Nirmal (PW-2) have already been examined by the prosecution and PW1-Krishna who was accompanying the victim when the alleged occurrence took place has not identified the assailants Sunny and Anil in her deposition. They have prayed for regular bail.

The prayer is opposed by learned State counsel assisted by SI Sahab Ram alongwith learned counsel for the complainant, who have argued that eye witness Krishna had not given the names of the assailants in her statement under Section 161 Cr.P.C. as at that time, there was no proper lighting, however, witness Nirmal has identified two assailants in her deposition before the trial Court who was 10 paces behind Krishna.

According to learned State counsel, Rajesh had given the contract of this murder to his employee Rahul, who further entrusted the job to his brother co-accused Sunny, who finally executed the crime alongwith co-accused Anil. He states that the weapons of offence, i.e. pistol and knife were recovered from Sunny and Anil and as per FSL report, the said weapons were used in the crime. However, it is not disputed that the case of the prosecution against the petitioners is based upon criminal conspiracy. He further states that out of total 29 prosecution witnesses, 11 witnesses stand examined, whereas 2 witnesses have been given-up.

At this stage, learned counsel for the petitioners have pointed out that the complainant and his wife PW-2 Nirmal have a reason to falsely implicate petitioner Rajesh to deprive him from inheriting the property left behind by the deceased. Mr. S.P. Arora, learned counsel for the petitioner Rajesh has further referred to the vital admissions suffered by witness Nirmal, who admitted that previously she lodged a case FIR No.1089 dated 27.10.2018 under Section 147, 149, 323, 354B, 506 IPC, Police Station Sadar Hisar, against Rajesh and the same was later on found to be false and accordingly was cancelled by the police. Learned counsel for the petitioners have submitted that the testimony of prosecution witness Nirmal cannot be treated as credible being an interested witness and they reiterate the prayer for bail to the petitioners. Mrs. Deipa Singh, learned counsel for petitioner-Rahul has argued that even no motive has been assigned to the said accused.

After hearing learned counsel for the parties, considering the above background and the length of custody of the petitioners, this Court is of the opinion that material witnesses have already been examined and the

remaining witnesses are either the complainant or the police officials and at present, there does not seem to be any possibility of their being won-over. Needless to observe that at the time of considering the prayer for bail, it would not be appropriate for this Court to examine the statements of the prosecution witnesses minutely to return a finding upon their trustworthiness, as the evidence is to be evaluated by the trial Court in the light of other evidence which is yet to be adduced by the prosecution. Admittedly, 11 prosecution witnesses still remain to be examined and it is apparent that the conclusion of trial would take considerable time. Thus, further detention of the petitioners behind the bars would not be necessary for useful purpose.

Resultantly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioners be released on regular bail in the above case, subject to their furnishing respective requisite bail bonds/surety bonds to the satisfaction of the trial Court concerned.

The petitions are allowed.

February 15, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No