

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

221

CRM M-19812 of 2022 (O&M)

Date of Decision: July 18, 2022

Deepak

...Petitioner

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. VINOD S. BHARDWAJ

Present : Mr. Bharat Bhushan Chaudhary, Advocate
for the petitioner.

Mr. Kanwar Sanjeev Kumar, AAG, Haryana.

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed on behalf of the petitioner under Section 439 of the Code of Criminal Procedure seeking concession of regular bail in case bearing FIR No. 340 dated 01.08.2019 under Sections 302 and 201 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station Sector 58, Faridabad.

The present case was registered on the basis of complaint given to the police by Rohit Kumar with the allegations that he is a conductor on vehicle bearing registration No. HR38U-7287 owned by Shyam Sunder who is his brother-in-law. On 30.07.2019, they had parked the said vehicle in Sector 59, Faridabad. On 31.07.2019, at about 10 P.M., he had gone to call Shyam Sunder and he saw that Shyam Sunder was consuming liquor alongwith two persons namely Deepak and Charan Singh at Deepak Dhaba. On the asking of Shyam

Sunder, he took meals and went to sleep in the said vehicle. When he woke up in the morning, he did not find Shyam Sunder, who used to sleep in the vehicle. Thereafter, he went to the Dhaba but Deepak was not found present and Charan Singh told him that he does not know the whereabouts of Shyam Sunder. However, his helper namely Chhotu asked him to search Shyam Sunder in the gutter. In the meanwhile, one milkman came and told that a dead body is lying in Sector 59, Faridabad. He called Shiv Bhola, younger brother of Shyam Sunder and they both identified dead body of Shyam Sunder which was lying in gutter. He alleged that he has a suspicion that Deepak and Charan Singh alongwith their friends have committed murder of Shyam Sunder and he sought action against them.

On 06.08.2019, accused Deepak was arrested and after recording his disclosure statement, offence under Section 34 IPC was deleted. On 08.08.2019, accused Deepak got recovered motorcycle which was used by him in the commission of the offence, a sum of Rs.82,500/- which he had withdrawn from the account of Shyam Sunder by using his ATM Card and mobile phone which Shyam Sunder had purchased on 31.07.2019. After completion of investigation, challan has been presented in the Court for trial.

Learned counsel appearing on behalf of the petitioner has contended that as per the allegations levelled in FIR, there were a total four persons including the deceased who were consuming liquor. It is submitted that during the course of investigation, all other three

persons have been found to be innocent. The case of the prosecution commenced on the statement of Chottu who was helper on the truck and who had informed the complainant to look for Shyam Sunder in the gutter, however, the said Chottu is not cited as a prosecution witness in the present case. He further contends that even though the cause of death is stated to have been as a result of being crushed under a truck, however, there is no link of the petitioner to any vehicle or any truck and no such vehicle has also been seized by the police during the course of investigation. He contends that even though the police alleges that an amount of Rs. 82,500/- had purportedly been withdrawn from the ATM card of the deceased, however, the police has chosen not secure the CCTV footage of the ATM from where the amount in question was withdrawn. Even though such a huge amount would not be permitted to be withdrawn from the operation of the ATM as there is a cap on the maximum withdrawal that can be effected. He further contends that police has failed to establish any motive for cause of murder or has not been able to lay their hands on any of the alleged instruments or modus claimed to be deployed in the commission of the offence. He further argues that the petitioner is being arraigned as accused solely on the strength of the 'last seen' evidence without any corroborating circumstances to show any participation on the part of the petitioner in the commission of the offence. He further submits that petitioner is in custody since 06.08.2019 and that out of total twenty nine witnesses cited by the

prosecution only twelve have been examined so far and seventeen witnesses are yet to be examined.

Mr. Kanwar Sanjeev Kumar, AAG, Haryana has, however, submitted that there has been a recovery of ATM card as well as the cash belonging to the deceased, and a sum of Rs. 82,500/- has been withdrawn from the account of the deceased on the disclosure of the petitioner which shows that he had committed the murder. He, however, could not controvert the fact that Chottu has not been cited as a prosecution witness and that no offending vehicle that had purportedly been used in the commission of the offence has been seized by the Investigating Agency. It is also not disputed that despite the petitioner having undergone an actual custody of nearly three years since his arrest, only twelve witnesses have been examined so far.

I have heard learned counsel for the parties and have perused the material on record.

Taking into consideration the facts noticed above, and the fact that the case is based upon circumstantial evidence and there is no eye witness as well as the period of custody already undergone coupled with the stage of trial and the clean antecedents of the petitioner, I deem it appropriate to enlarge the petitioner on bail.

Accordingly, the present petition is allowed and the petitioner is admitted to regular bail subject to his furnishing bail

bonds/surety bonds to the satisfaction of Trial Court/Duty Magistrate, concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of available material.

July 18, 2022
amit rana

(VINOD S. BHARDWAJ)
JUDGE

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