

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-22157-2021 (O & M)****Date of decision: 28.10.2022**

Khushi Ram

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Bipan Ghai, Sr. Advocate,
with Mr. Rishabh Singla, Advocate, for the petitioner.

Mr. Vikrant Pamboo, DAG, Haryana.

Ms. Amrita Garg, Advocate, for the complainant.

JASJIT SINGH BEDI, J. (Oral)**CRM-36261-2022**

The application for placing on record statements of Ishwar, Preetam recorded under Sections 175 Cr.P.C. as well as under Section 161 Cr.P.C. (Annexure P-15, P-16 and P-17) is allowed as prayed for. The aforesaid documents are taken on record. The Registry is directed to tag the same at the appropriate place of the paper-book.

CRM-M-22157-2021

The prayer in the present second petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No. 270 dated 05.09.2018 under Sections 302, 147, 149, 120-B IPC and Section 3 of SC & ST Act, 1989 registered at Police Station Narnaund, District Hisar, Haryana.

2. The brief facts as narrated in the FIR are that on on 03.06.2018, the deceased-Gaurav accompanied by his friends, namely, Ritesh, Preetam,

sons of the elder brother of the complainant-Ishwar, namely, Rohtas, Rajesh,

Khushi Ram (petitioner) and Suraj Bhan alias Ashu had gone to the restaurant. Ritesh telephonically informed the complainant-Ishwar that Gaurav had died in the evening at about 4.30 p.m.. The complainant got shocked and took the deceased-Gaurav to Delhi Hospital, HUDA, where he was told that there were marks of injuries on his body and he should be taken to the Government hospital. On being taken to the Government hospital, the doctor checked Gaurav and found that he had died. The doctor informed them that the post-mortem should be conducted and the cause of death shall be revealed thereafter. Rishi, the younger son of the complainant-Ishwar, photographed the dead body of the Gaurav (deceased). On his own enquiry, the complainant came to know that, in fact, the deceased had not died on account of drowning and the aforementioned persons had given this version to him in order to save themselves. They all were involved in the death of his son.

3. The learned Senior counsel for the petitioner contends that Ishwar (complainant) had got recorded his statement during inquest proceedings on 04.06.2018 (P-15) wherein he did not express any suspicion on anyone and stated that he had been told that the deceased-Gaurav had died on account of drowning. Thereafter, the FIR came into existence on 05.09.2018 which was based on suspicion. It was only subsequently on 01.03.2019 that a supplementary statement (Annexure P-2) was made by the complainant in which he has stated that his nephews Ritesh and Parveen had revealed to him that they had all gone to the water park/restaurant and had started swimming. Khushi Ram (petitioner) had brought a bottle of beer and asked about the deceased and stated that if Gaurav dies, then their reputation would be tarnished. In fact, Gaurav was not to be found anywhere and all the friends had gone to the parking lot to search for him.

However, he (Gaurav) was found unconscious in the water. The conduct of the petitioner-Khushi Ram, at that time, was suspicious and even later, the mobile phone of the deceased-Gaurav was found in the possession of Khushi Ram in the car while they were travelling to the hospital. The motive was the alleged friendship of the deceased with Vicky, wife of Khushi Ram (petitioner). The learned counsel contends that these statements taken collectively, do not further the case of the prosecution in any manner as there is no eye-witness to the occurrence and the entire version of the complainant amounts to hearsay evidence.

He contends that Preetam had also made a statement during the inquest proceedings on 04.06.2018 (P-16) wherein his version was that the deceased had fallen into the deep-end of the pool and had died on account of drowning. It was only on 17.04.2019 when his statement (P-17) was recorded under Section 161 Cr.P.C. that he virtually reiterated the version as mentioned in the supplementary statement of the complainant. Therefore, even the version of Preetam does not further the case of the prosecution as he is also not an eye-witness to the occurrence and only refers to the allegedly suspicious conduct of the petitioner. He, thus, contends that taking the statement of these two witnesses to be correct, by no stretch of imagination can it be stated that the petitioner has committed the offence in question.

He contends that all the material witnesses including PW-1/Ishwar and PW-2/Preetam have been examined. While PW-1/Ishwar (complainant) and PW-2/Preetam have supported the case of the prosecution, the other witnesses have not supported the case of the prosecution. PW-6/Omender, who is an employee of the water park was

PW-2/Preetam regarding what had transpired at the water park. With respect to the illicit relations, his version is that he had come to know about the same. The said version would amount to hearsay evidence and thus, would be inadmissible in evidence.

The learned Senior counsel for the petitioner further contends that though the complainant had named as many as five other persons in the FIR as having accompanied the deceased-Gaurav, only Khushi Ram has been made an accused. This also creates a doubt in the case of the prosecution. He contends that there is no evidence of the alleged illicit relations between Vicky, wife of the petitioner-Khushi Ram with Gaurav (deceased). He contends that surprisingly despite the fact that the occurrence had taken place at 4.30 p.m. in the afternoon, there was no eye-witness to the occurrence. The version of the prosecution that the deceased was inflicted injuries in the washroom and thereafter carried to the swimming pool as is borne out from the confessional statement of the petitioner cannot be believed in view of the fact that the washroom attached to the restaurants would be at some distance from the swimming pool. Even otherwise, it was not possible for a single person to assault the deceased and then pick him up and dump him in the pool without being seen by anyone. In fact, a perusal of the FSL report dated 05.07.2018 and 17.09.2018 would suggest that the deceased was in an inebriated condition and thus, might have fell into the pool himself.

It is lastly contended that the petitioner is in custody since 07.03.2019. 13 relevant witnesses out of 29 witnesses cited in the list of prosecution witnesses have been examined. Other than the PW-1/Ishwar, and PW-2/Preetam, none of the purported eye-witnesses, namely, Pawan

the prosecution. Similarly, Manjeet (PW-7) and Sonu (Pw-8) have also not supported the case of the prosecution. Pw-6/Omender's statement has already been referred to hereinabove. Since the material witnesses have been examined, the further incarceration of the petitioner is not required.

4. The learned counsel for the State, while referring to the reply, on the other hand, contends that the petitioner is the only accused. The allegations against him are grave. He had assaulted the deceased and thereafter, drowned him in the swimming pool. PW-1/Ishwar (complainant) and PW-2/Preetam have categorically deposed against the petitioner. The motive was apparent. The wife of the petitioner was on friendly terms with the deceased-Gaurav which was not to the liking of the petitioner which led him to commit the offence in question. He, thus, contends that the petitioner does not deserve the concession of bail looking at the seriousness of the allegations. He, however, does not deny the fact that some of the witnesses have turned hostile and all material/relevant witnesses stand examined.

5. The learned counsel for the complainant has also vehemently opposed the bail application contending that the petitioner is the main accused and does not deserve the concession of bail. In fact, PW-1/Ishwar (complainant), PW-2/Preetam and PW-6/Omender have supported the case of the prosecution. The motive lay with the petitioner to commit the offence in question, and therefore, the petitioner does not deserve the concession of bail.

6. I have heard the learned counsel for the parties at length.

7. In the present case, the occurrence allegedly took place on 03.06.2018, the statement of the complainant was recorded during inquest proceedings on 04.06.2018 and the FIR came to be registered on 05.09.2018.

01.03.2019. Similarly, the statement of Preetam (PW-2) was recorded during inquest proceedings on 04.06.2018 and his statement was recorded under Section 161 Cr.P.C. on 17.04.2019. Undoubtedly, the said two witnesses i.e. Ishwar (PW-1) and Preetam (PW-2) have been examined during the course of Trial and have supported the case of the prosecution. However, keeping in view the attending circumstances, it would be a matter of adjudication during Trial as to the evidentiary value of these statements.

8. The petitioner is in custody since 07.03.2019. 13 material prosecution witnesses stand examined, most of whom have not supported the prosecution case. As many as 16 prosecution witnesses, who are mainly formal in nature, remain to be examined. Thus, the Trial of the present case is not likely to be concluded anytime soon. Therefore, the further incarceration of the petitioner is not required.

The Hon'ble Supreme Court in “Dr. Gokarakonda Naga Saibaba Versus State of Maharashtra, 2016(2) RCR (Criminal) 675 and this Court in “Devender Singh @ Devender Chhabra @ Tintu Versus State of Punjab, CRM-M-27957-2015 decided on 22.08.2016 has held that grant of bail can be considered, where witnesses stand examined

9. In view of the aforementioned discussion but without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Khushi Ram is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

(JASJIT SINGH BEDI)
JUDGE

October 28, 2022
sukhpreet

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