

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-27947-2022 (O&M)

Date of Decision:-3.8.2022

Shiva @ Shiv

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Vineet Sehgal, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered vide FIR No.410 dated 15.11.2019, Police Station Sector 17/18, Gurugram, Haryana, under Sections 302, 34, 342, 365 and 387 of Indian Penal Code.
2. The FIR was lodged at the instance of Ran Bahadur, wherein it is alleged that on 7.11.2019 at about 8 a.m., he found a dead body of a young male person, who was wearing a white coloured shirt, black coloured undergarment and grey coloured denim pants. He further stated that the name 'Sangeeta' was inscribed on his chest and the letter 'S' had been inscribed as a tattoo on his right arm apart from another tattoo 'AAA', which was inscribed on his right wrist. He further stated therein that the said person appeared to have died on account of some disease/illness. It is further the case of prosecution that during the course of investigation, the police collected CCTV footage from

which co-accused Umesh was identified and who further, upon interrogation, disclosed the name of other three accused.

3. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the present case and that it is a case of blind murder, where a dead body was recovered and that there is no convincing evidence to connect the petitioner with the alleged occurrence. Learned counsel has further submitted that during the course of investigation, the police recorded statements of Payal and Suraj, sister and brother of the deceased Ashu in terms of Section 161 Cr.P.C. wherein they stated that Suraj, with whom Ashu was residing had received telephone calls on 7.11.2019 from mobile Nos.70112-46209, 97738-24550 and 81036-00875, and the caller stated that Ashu had taken an amount of Rs.25,000/- from them but was not returning the same and that in case the same is not returned, they will give beatings to said Ashu. It is further stated therein that they arranged for the amount and contacted the said persons telephonically and asked them to release Ashu. Although they went to the place, where they were told to come by the caller but Ashu could not be found.
4. Learned counsel for the petitioner submits that when the aforesaid two witnesses were examined during the course of trial, they did not say a word as regards the aforesaid receipt of telephone calls or demand of any money and were declared hostile. Learned counsel has further submitted that infact it is a case where admittedly the deceased was a drug addict and had apparently died on account of some vehicular accident. Learned counsel, in this regard, has drawn the attention of this Court to FIR No.0399 dated 14.11.2019, Police Station Subhash Palace, North-West (Delhi), under

Section 365 of Indian Penal Code (Annexure P-9), which had been recorded in the first instance in Delhi, when Ashu went missing, wherein Payal i.e. Ashu's sister categorically stated that Ashu was addicted to drugs and used to stay out of house for several days at length without any information. Learned counsel also referred to the cross-examination of PW-5 Suraj (Annexure P-6), wherein also he has stated during cross-examination that his cousin was a drug addict and died in road accident. It has thus been submitted that in the absence of any cogent and convincing evidence to connect the petitioner with the alleged occurrence, he cannot be held guilty and that, as such, the petitioner, who has been behind bars since the last more than 2 years and 6 months, deserves the concession of bail.

5. On the other hand, learned State counsel has submitted that since in the CCTV footage, the petitioner is shown standing while the co-accused Umesh gave a blow with stick on the legs of deceased, his complicity is clearly evident. Learned State counsel has submitted that a perusal of the post mortem report would indicate that the cause of death has been opined to be external injuries and their internal consequences, which would corroborate the version as reflected in the CCTV footage, wherein one of the co-accused is shown to be inflicting injuries with the help of stick. Learned State counsel has, however, informed that the petitioner as on date has been behind bars since the last more than 2 years and 6 months and that as on date only 7 out of the cited 30 PWs have been examined. It has also been informed that the petitioner otherwise is not involved in any other case.
6. I have considered rival submissions addressed before this Court.

7. It is not in dispute that there is no eye-witness to the occurrence. The prosecution mainly relies upon CCTV footage, which shows that one person is inflicting blows to another person with the help of stick on his legs. It will be a matter of evidence as to which of the persons shown in CCTV footage is the petitioner. The real sister of the deceased i.e. PW-Payal and cousin brother of the deceased i.e. PW-5 Suraj have not supported the case of prosecution and were declared 'hostile'. So much so the real sister of deceased i.e. Payal, at the time of lodging of the FIR in Delhi pertaining to 'missing' of the petitioner, categorically stated that her brother was an addict. To a similar effect is the cross-examination of PW-5 Suraj, who has also stated that the deceased was a drug addict and had died in an accident. The petitioner has been behind bars for a substantial period of more than 2 years and 6 months. Conclusion of trial is likely to consume time inasmuch as only 7 out of the cited 30 PWs have been examined so far. The petitioner is stated to be having a clean record. In these circumstances, further detention of the petitioner will not be justified. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

3.8.2022

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**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No