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

Date of decision: 23.02.2022

1. CRM-M No.35984 of 2020 (O&M)

Ghanshyam

....Petitioner

Versus

State of Haryana

....Respondent

2. CRM-M No.12903 of 2021 (O&M)

Suresh Sharma

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Jigyasa Tanwar, Advocate
for the petitioner (in CRM-M-35984-2020)

Mr. Vishal Garg Narwana, Advocate
for the petitioner (in CRM-M-12903-2021)

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in these petitions are for grant of regular bail to the petitioners namely Ghanshaym and Suresh Sharma, under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.10 dated 08.01.2018, for offence punishable under Sections 186, 353, 307, 302, 120-B of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station Palam Vihar, District Gurugram.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of Constable Sanjay Kumar, it is stated that he is deployed as Constable Driver of PCR-22,

Palam Vihar, Gurugram and on 08.01.2018 at night, while on petrol duty, he received an information that one suspected Xylo Mahindra bearing registration No.PB-11-BU-1312, is coming from Delhi side and a barrier was put to stop the vehicle. On this information, the complainant along with Constable S.P.O. Mukesh, put a barricade and when the aforesaid vehicle was seen coming from Old Delhi road side, they signalled their hands to stop the same, however, the unknown driver of the vehicle intentionally, on seeing the police party, colluded with the PCR from the back side and due to that impact, Constable Mukesh, who was standing along with the PCR vehicle, was injured and fell down. Thereafter, he was taken to the hospital where he was declared dead.

Counsel for the petitioner has further submitted that as per the further investigation by the police, the petitioner – Ghanshyam was arrested on 19.01.2018 and the vehicle was recovered on 23.01.2018 i.e. 04 days after his arrest and 65 boxes of liquor were recovered. It is further submitted that the petitioner was, in fact, nominated on the statement of the wife of the co-accused/petitioner – Suresh Sharma, as a driver of the offending vehicle. It is also submitted that the petitioner is in custody for the last 04 years and 29 days and after 22 witnesses were examined, one co-accused Himanshu was declared proclaimed offender, the trial has *de novo* started and again, 06 PWs have been examined and it will take long time in conclusion of the trial.

Counsel for the petitioner has also submitted that there are material improvements in the statement of the complainant Sanjay Kumar, who appeared as PW-4 and with reference to the medical evidence, it is stated that it was a case of accident, which has been

given the colour of murder.

Counsel appearing for the petitioner Suresh Kumar has argued that the petitioner is in custody for the last 03 years, 10 months and 09 days and he was neither the driver nor owner of the offending vehicle as per statement of PW-18 Pankaj Sharma, the registration Clerk.

It is common argument of both the counsel for the petitioners that no call details of the petitioners were collected to find their presence at the place of occurrence and no recovery was effected from them.

Counsel for the petitioners have referred to the judgment ***“Arnab Manoranjan Goswami vs The State of Maharashtra and others”***, 2021(2) SCC 427, wherein the Hon’ble Supreme Court has held that the long custody of a person can be a ground to grant bail to an accused.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position and submits that after examination of 20 of the witnesses, the trial has re-started. However, it is submitted that the petitioner – Suresh is involved in some other cases though, as per the affidavit filed by the petitioner, he is on bail in other FIRs, which are primarily registered under the Excise Act.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioners are in long custody of more than 04 years and 29 days and 03 years and 10 months, respectively; the custodial interrogation of the petitioners is not required and the conclusion of the trial will take long time due to COVID-19 situation, these petitions are allowed and

the petitioners namely Ghanshyam and Suresh Sharma 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 petitioners, 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

23.02.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No