

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

111+204

**CRM-13138-2022 in/and
CRM-M-37781-2020 (O&M)
Date of Decision: 23.05.2022**

GAUTAM KUMAR

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. G.B.S. Dhillon, Advocate
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

CRM-13138-2022

Instant application has been filed Section 482 of the Cr.P.C. for placing on record the copy of statement of PW1 as Annexure P-2.

For the reasons mentioned therein, the instant application is allowed as prayed for subject to all just exceptions.

Annexure P-2 is ordered to be taken on record. The Registry is directed to tag and page mark the same at appropriate place of the paper book.

MAIN CASE

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.156, dated 03.08.2019 under Sections 302, 201 and 120-B of the Indian Penal Code, 1860, registered at Police Station Dehlon, District Ludhiana.

Learned counsel appearing on behalf of the petitioner *inter alia* contends that the FIR in question had been registered on the complaint of one Sanjay Kumar @ Pappu (uncle of the deceased). It was alleged in the FIR that Raju Gupta (deceased) - brother of the complainant, was owning a small transport vehicle make TATA Ace. It is submitted that as per the allegations levelled in the FIR, on 02.08.2021, Raju Gupta had come back home at around 8.30 p.m. and thereafter, he went to market to purchase a capri on his Activa bearing No.PB-10GG-4960 but did not return home. It is alleged that they were searching for him and that when they reached about 300 meters on the G.T. Road towards village Jarkhard, he saw the dead body of his brother lying inside edge of a drain and they noticed that there were numerous cuts on the dead body. The right hand was also missing and that the body had been damaged by street dogs. It is alleged that some unidentified persons had attacked his brother and after killing him, threw the dead body there. Learned counsel contends that the petitioner was not named in the initial version of the FIR and that the name of the petitioner figured in the supplementary statement of the complainant namely Sanjay Kumar, who suspected that the petitioner (initially identified as Rinku) and Shubham (nephew of the complainant) had killed his brother Raju Gupta. It is submitted that deceased Raju Gupta and the petitioner were close friends and the proximity of the petitioner with Raju Gupta was to the dislike of the complainant. It is further submitted that the complainant wanted to sell the vehicle owned by Raju Gupta (deceased) and the petitioner informed the complainant that the deceased had borrowed a sum of Rs.10,000/- and had sought to return the same out of the proceeds of the sale of the vehicle. It was at this juncture that he suspected Shubham (nephew of the complainant) of having illicit relation with the wife of the deceased and

that the petitioner had been arraigned as accused in the instant case. Learned counsel further submits that it is a case of 'no recovery' from the petitioner as would link the petitioner with the commission of offence, except for the statement of the complainant Sanjay Kumar @ Pappu. He has also made reference to the testimony of the complainant in Court recorded as PW-1, dated 04.10.2021, as per which, the complainant has not identified the petitioner and has been declared hostile. Learned counsel further submits that the petitioner has already undergone an actual custody of 01 year, 07 months and 19 days and that he was granted the concession of ad-interim bail by this Court vide order dated 17.03.2021. There is no allegation on the petitioner of having misused the said concession extended to him.

Per contra, learned counsel for the State has not been able to controvert the said facts.

Taking into consideration the the circumstances discussed above, the period of custody undergone by the petitioner and the fact that the interim bail was granted to the petitioner by this Court vide order dated 17.03.2021, coupled with the fact that the complainant Sanjay Kumar, already examined as PW-1 before the trial Court, has not supported the case of the prosecution, I deem it appropriate to allow the instant petition.

Accordingly, order dated 17.03.2021 is, hereby, made absolute.

Petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

23.05.2022
rajender

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