

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1157-2023
Date of Decision: 05.07.2023

[Sunil@Sunil](#) Kumar

...Petitioner

Vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Manoj Pundhir, Advocate
for the petitioner.

Ms. Sheenu Sura, Deputy Advocate General, Haryana.

Mr. Sunny, Advocate
for the complainant.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 439 Cr. PC with a prayer to grant of regular bail to him in FIR No.342 dated 24.11.2018 under Section 346 of IPC, sections 201, 302, 346, 365, 34 of IPC added later on, registered at Police Station Israna, District Panipat, but the petitioner was charge-sheeted for the offences under Section 302, 346, 201 & 34 of IPC.

2. As per the case of the prosecution, the FIR in the instant case was got registered by Sunita wife of Suraj Parkash, mother of Vivek @ Chetan by alleging that her elder son Vivek @Chetan, aged about 20 years had left from the burger shop of Amit in the evening of 23.11.2018 and had not returned home after that. They had been searching him at their relatives and nearby and had not found him so far and her son might be searched. Consequently, FIR

No.342 dated 24.11.2018 was registered under Section 346 IPC at Police Station Israna. Later on, the dead body of Vivek @ Chetan was found by his father on 06.12.2018 and during the course of investigation, the police had added the offences under Sections 201, 302,346, 365, 34 of IPC. The police recorded the statements of Amit son of Suresh, who was running a fast food shop in the village itself, to the effect that he had last seen the petitioner in the company of Vivek@ Chetan, since deceased, on 23.11.2018. The police also recorded the statement of Yogesh son of Naresh Kumar to the similar effect and the petitioner was arrested in the present case on 07.12.2018.

3. Learned counsel for the petitioner vehemently contended that the police had falsely implicated the petitioner in the present case by recording the statements of Amit and Yogesh, who are closely related to Vivek @ Chetan deceased. Vivek @ Chetan was missing since 23.11.2018 and Amit & Yogesh were closely related to the deceased, still they made statement before the police, after the discovery of dead body of Vivek @ Chetan on 06.12.2018 and this fact alone raises suspicion. He further submitted that the entire prosecution case is based on circumstantial evidence. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of the guilt is drawn should be fully proved. In the present case, except the theory of last seen, there was no other evidence to connect the petitioner with the alleged crime and the “evidence of last seen” and the “alleged discoveries made from the information given by the present petitioner” were not sufficient to prove the guilt of the petitioner. Rather it was evident that PW-1 Amit and PW-2 Yogesh, who were close relatives of the deceased, were introduced as witnesses against him. He further contends that the prosecution had already examined

PW-1 Amit and PW-2 Yogesh, who had allegedly seen the deceased in the company of the petitioner. Apart from that, prosecution had also examined PW-5 Sunita first informant/mother of the deceased and PW-6 Suraj Parkash father of the deceased. While referring to the testimonies of above stated witnesses, learned counsel for the petitioner has made twofold submissions. Firstly, from a perusal of the above referred testimonies, it is established that there was no incriminating evidence against the present petitioner till this stage. Secondly, all the material witnesses have already been examined and there are no chances of tampering with the prosecution evidence at this stage. While referring to the interim order dated 21.03.2023, passed by this Court, learned counsel for the petitioner further contended that the prosecution had only examined nine witnesses out of total twenty one witnesses and the conclusion of the trial may quite take long time. He further contended that the petitioner was arrested in the present case on 07.12.2018 and was in custody for more than 4 years and 07 months and his further detention would serve no meaningful purpose. He also submitted that co-accused Monika his wife has already been granted the concession of bail by this Court.

4. On the other hand, learned counsel appearing on behalf of State of Haryana assisted by learned counsel for the complainant, have vehemently opposed the submissions made by the learned counsel for the petitioner. It was contended that there was sufficient evidence against the petitioner and there was reasonable apprehension that the petitioner may tamper with the prosecution evidence. Still further the petitioner is the main accused and is not entitled for concession of bail.

5. I have heard the learned counsel for the parties and with their able

assistance, I have gone through the record carefully.

6. In the present case, it is not in dispute that the entire case is based on circumstantial evidence. Even though, the prosecution has alleged certain circumstances, from which the conclusion of the guilt may be drawn, yet the said circumstances will be established only during the course of trial, after due appreciation of evidence. Apart from that, PW-1 Amit, PW-2 Yogesh, PW-5 Sunita and PW-6 Suraj Parkash i.e material witnesses of the prosecution, have already been examined in the instant case. Further, Monika, co-accused wife of the petitioner, has already granted the concession of bail by this Court. Above all, the petitioner was arrested in the instant case on 07.12.2018 and has undergone more than 04 years and 07 months incarceration.

7. Thus, in the considered opinion of this Court, further custody of the petitioner in jail would be violative of his right to speedy trial under Article 21 of the Constitution of India. Accordingly, the present petition is allowed. The petitioner is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial Court/ Duty Magistrate/Chief Judicial Magistrate.

05.07.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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