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

CRM-M-6123-2022 (O&M)
Date of decision : 14.02.2023

Adil

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Puneet Bali, Advocate for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

Mr. Raj Sumer Singh, Advocate and
Mr. Amit Gupta, Advocate for the complainant.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.8 dated 09.01.2021 registered under Section 346 of Indian Penal Code, 1860 (deleted later on and Sections 302, 364, 120-B, 201, 34 of IPC have been added later on) at Police Station Gandhi Nagar, District Yamuna Nagar.

On 01.02.2023, the present petition for grant of regular bail to the petitioner came up for hearing before the Coordinate Bench of this Court and the Coordinate Bench of this Court was pleased to pass the following order:-

“Learned counsel for the complainant submits that regular bail filed at the instance of other co-accused bearing CRM-M-6038-2022 arising out of the same FIR, is listed before

other Bench (Vikas Bahl, J.).

Let this matter be listed before the same Bench after obtaining appropriate orders from Hon'ble the Chief Justice.

01.02.2023

Sd/- (HARKESH MANUJA)

JUDGE”

In pursuance of the abovesaid order, the present petition has been listed before this Court.

Learned Senior Counsel for the petitioner has submitted that the petitioner is in custody since 21.02.2021 and there are 39 prosecution witnesses, out of which, only 9 witnesses have been examined as yet and thus, the conclusion of trial is likely to take time. It is further submitted that FIR, in the present case, was registered on 09.01.2021 by the complainant-Ashraf on the basis of allegations that his brother Azim had gone out of his house on 07.01.2021 and after that, he was not traceable and thus, FIR was registered under Section 346 of IPC. Learned Senior Counsel for the petitioner has highlighted the fact that the complainant had got recorded the appearance of the deceased given in the FIR for facilitating his search and it was mentioned that the deceased was 5 feet 6 inches tall and was wearing blue jeans, red jersey and black shoes in his feet. It is contended that dead body was recovered from the canal on 08.02.2021 and the said dead body cannot be stated to be the dead body of the deceased-Azim inasmuch as, as per the postmortem report, height of the said dead body was stated to be 68 inches i.e. 5 feet 8 inches, whereas the height mentioned in the FIR was 5 feet 6 inches. It is further contended that a further perusal of the postmortem report would show that there was no ligature mark on the dead body whereas it is the case of the prosecution, which finds mention in the disclosure

statement of Sharafat Ali, that a muffler was put around the neck of the deceased and the deceased was choked by the accused persons. It is argued that a perusal of the postmortem report would show that even the clothes which were worn by the dead body i.e., black white striped shirt, white banyan, grey pant, were different from the clothes as were stated to be worn by Azim in the FIR. Learned Senior Counsel for the petitioner has further pointed out that in order to identify the body, DNA profiling was done and for the said purpose, a piece of the right little finger of the deceased was compared with DNA profile of the mother of Azim and it was found that the said two samples are not comparable. It is further argued that in the present case, although, the provision of Section 302 of IPC has been added but it has not even been established that the dead body which was recovered from the canal was of Azim. It is also submitted that the petitioner was neither named in the FIR nor in the supplementary statement of the complainant which was recorded on 19.02.2021 and was named only in the disclosure statement of co-accused Sharafat Ali who was arrested on 21.02.2021 in pursuance of the supplementary statement made by the complainant on 19.02.2021, in which, he had raised suspicion qua Asha Rani and Sharafat Alii for having committed murder of his brother. It is also contended that the petitioner is not involved in any other case and thus, prays for grant of regular bail to the petitioner on the ground of custody and additionally, on the fact that it is not even established that the dead body which had been recovered was of Azim and also on the fact that no suspicion has been cast by the complainant against the present petitioner either in the FIR, or even in the supplementary statement dated 19.02.2021.

On the other hand, learned State Counsel, on instructions from SI Surjan Singh, alongwith learned counsel for the complainant, have opposed the present petition for grant of regular bail to the petitioner and have submitted that in the present case, there are four accused persons, all of whom are cousins and in the supplementary statement dated 19.02.2021, the complainant had named Asha Rani and Sharafat Ali and on the basis of same, Sharafat Ali was arrested and it is on the disclosure statement of the said Sharafat Ali, that the petitioner, who is the cousin of the said Sharafat Ali, has been made an accused. It is further submitted that the motive with respect to committing the said murder was that the deceased used to tease the niece of Sharafat Ali and thus, Sharafat Ali, along with his cousins including the petitioner, has committed the said offence.

Learned counsel for the complainant has referred to the photographs (Annexure A-1 and A-2) and has argued that the clothes worn by Azim in the said photographs are similar to the clothes which were worn by the dead body as per the PMR, and has thus, submitted that in the present case, the fact that the dead body was of Azim is established. It is further submitted that the complainant has identified the dead body of his brother.

Learned State Counsel and learned counsel for the complainant have further referred to Annexure R-4 to show that Sharafat Ali, Israr and the present petitioner had identified the place where Azim was killed and also identified the place where the dead body of Azim and his motorcycle was thrown. Further reference has been made to the statement of Anuj Sharma under Section 161 Cr.P.C., who is stated to be the owner of the Ritz car, which as per the statement of Anuj Sharma was taken by Sharafat Ali from

him and after using the same for committing the offence, the said car was returned by Sharafat Ali and at that time of returning the car, the present petitioner was also sitting with Sharafat Ali along with two other co-accused. It is submitted that on the basis of the said fact, the petitioner does not deserve the concession of regular bail.

This Court has heard learned counsel for the parties and has perused the paper book.

In the present case, the petitioner is in custody since 21.02.2021 and out of 39 prosecution witnesses, only 9 witnesses have been examined and thus, the conclusion of trial is likely to take time. The petitioner is stated to be not involved in any other case. Learned Senior Counsel for the petitioner has raised arguments so as to cast doubt as to whether the dead body which has been recovered is of Azim or not. In the FIR, height of the deceased is stated to be 5 feet 6 inches whereas in the postmortem report, height of the dead body which has been recovered is 68 inches (5 feet 8 inch). In the postmortem report, it has been stated that there is no ligature mark on the body of the deceased, whereas it is the case of the prosecution, which is apparent from the disclosure statement of Sharafat Ali, that a muffler was put around the neck of the deceased and he was choked and strangled before he was thrown into the canal. The DNA profiling report dated 31.08.2021 filed along with reply filed by the State would also show that it has been stated that the "Autosomal STR analysis indicates non specific multiple allelic DNA profile in item No.1" (piece of right little finger of the deceased) "which is not comparable with DNA profile obtained from item No.2" (blood sample of the mother of Azim). The question as to whether the body

recovered is of Azim or not would be finally adjudicated during the course of trial but the same raises an arguable point in favour of the petitioner in the present case. Moreover, initially, the FIR was registered under Section 346 of IPC on 09.01.2021 and the petitioner was not named in the same. The complainant had got recorded his supplementary statement on 19.02.2021 and even in the said statement, the present petitioner had not been named and thus, the complainant, at no stage, has specifically raised suspicion against the present petitioner.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

14.02.2023*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**