

CRM-M- 6345-2023 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M- 6345-2023 (O&M)
Date of Decision:19.05.2023

Surinder Kumar alias Shinder alias Surinder Pal

... Petitioner

V/s.

State of Punjab

... Respondent

CORAM: **HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present : Ms. Taranjit Kaur Hundal, Advocate
for the petitioner.

Mr. Madhur Sharma, AAG, Punjab.

DEEPAK MANCHANDA, J.(Oral)

Petitioner has prayed for grant of regular bail pending trial under Section 439 Cr.P.C. in case FIR No. 186 dated 08.11.2021, under Sections 302, 201, 34, 379 IPC registered at Police Station Sadar Nakodar, District Jalandhar Rural (Punjab).

The FIR in the present case has been registered on the basis of statement of Vishal Kumar,s/o Kishori Lal dated 08.11.2021 wherein it has been stated that his eldest brother Akshay Kumar alias Sonu was running a lottery stall at Mohalla Rehmanpura, Nakodar. On 02.11.2021, at about 1.00 p.m., he had gone to his shop on his black colour bullet motorcycle bearing No. PB-08-ET-5551 but did not reach there and about 4.45 p.m., said Akshay Kumar informed the complainant telephonically that he was going

CRM-M- 6345-2023 (O&M)

-2-

to village Dhaliwal to meet his friend Pawan Kumar. But Akshay Kumar neither returned home till 10.00 p.m., nor picked up the calls of the complainant. Thereafter, the complainant made a telephonic call to Pawan, who informed him that Akshay Kumar did not turn up to meet him today. A search was made by him, but to no avail. It was further stated that on 03.11.2021, at about 8.00 a.m., the complainant came to know that motor-cycle of his brother Akshay Kumar was lying parked near a closed brick-kiln on the road from Shankar to Boparai Kalan and his dead body was also lying there. The complainant along with other family members reached at the spot and found the dead body of Akshay Kumar as well as the motor cycle. On his search, the mobile phone was found switched off and the key of the motor cycle was found in his pocket, however, his gold chain, earrings and purse were missing. On making enquiry of his own, the complainant came to know that his brother Akshay Kumar alias Sonu has been murdered by Ashwani Kumar, Balram alias Bunty, Abhishek alias Abhay and Surinder Kumar alias Shinder(The petitioner) and they threw his dead body at the brick-kiln.

Learned counsel for the petitioner contends that as per the alleged FIR, the murder took place on the intervening night of 02.11.2021/03.11.2021 where the complainant on 03.11.2021 itself got recorded the statement and despite being there a death under suspicious circumstances only proceedings under Section 174 Cr.P.C. were initiated, whereas during the intervening period from 03.11.2021 and 08.11.2021 last rites of deceased were performed by the family and the entire evidence was destroyed as there was no requirement for the police to take any legal

CRM-M- 6345-2023 (O&M)

-3-

action. Learned counsel submits that it is only after the gap of 5 days, the story was cooked up by the complainant and an FIR was registered on 08.11.2021 that too on self investigation of the complainant.

Learned counsel further contends that on the basis of disclosure statements made by co-accused, Ashwani Kumar and Balram@Bunty dated 11.11.2021 and 12.11.2021, the present petitioner was implicated in the present case as according to said disclosure statements, the petitioner was allegedly called on the spot to dispose of the body of Akshay Kumar(Deceased) and thereafter the petitioner along with co-accused Ashwani Kumar had taken the body on the Splendor motorcycle and thrown away the same near the brick-kiln. The other co-accused Balram is stated to have taken the Bullet motorcycle of the deceased and parked it near the dead body.

Learned counsel for the petitioner has argued that from the aforesaid disclosure statements it is evident that the petitioner has not been attributed any role in the alleged murder and had come into picture after the co-accused informed him that Akshay Kumar had died and they called the petitioner and Abhishek, the other co-accused who helped them to dispose of the dead body of Akshay Kumar (deceased) and said Abhishek has already been granted regular bail in CRM-M-28046 of 2022 vide order dated 08.07.2022 (Annexure P/2), by the co-ordinate Bench.

Learned counsel for the petitioner submits that the post-mortem of deceased was conducted on 16.12.2021 and the Viscera report was sent for forensic examination vide Rapat No. 6 dated 28.01.2022 which is still awaited and, It is further submitted that the petitioner at best can be

CRM-M- 6345-2023 (O&M)

-4-

liable for an offence under Section 201 IPC and not for an offence under Section 302 IPC ,where challan stands presented and charges have also been framed and out of total 19 prosecution witnesses, one has been examined.

Learned State Counsel has opposed the bail application on the ground that the petitioner made an attempt to dispose of the dead body and destroyed the evidence and does not deserves any concession of bail but has not disputed that the petitioner is at par with the co-accused Abhishek@Abhay ,who has already been granted concession of bail by this Court vide order dated 08.07.2022, and no other case is pending against him, and status of trial is also admitted.

Petitioner is in incarceration since 15.11.2021.

I have heard learned counsel for the parties. This is not in dispute that co-accused namely Abhishek@Abhay who has already been granted concession of bail by this Court, vide order dated 08.07.2022 ,the petitioner is at par with him and moreover, there is nothing on record to suggest that the petitioner, who was not even present on the spot, had conspired along with others causing death of Akshay. Further the contentions of the learned counsel for the petitioner with regard to the petitioner ,who was allegedly called on the spot to dispose of the body of Akshay Kumar(Deceased) have not been denied in the reply filed by the state. It is also admitted in the reply the viscera report/FSL report which was sent on 28.01.2022 is still awaited and challan stands presented ,where charges have also been framed and out of total 19 prosecution witnesses, one has been examined. The trial would take sufficient time, so no useful purpose would be served in keeping the petitioner behind bars.

CRM-M- 6345-2023 (O&M)

-5-

Resultantly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court concerned on the following conditions:-

- 1.he shall appear before the Court on each and every date of hearing;*
- 2.he shall not give any threat or intimidation to the prosecution witnesses;*
- 3.he shall not indulge in any criminal activity.*

The Court accepting bonds would ensure that two local sureties who are financially sound having immovable properties within jurisdiction of the district furnish the bonds.

In addition to that the trial Court may impose any term and condition found suitable to ensure that the petitioner does not abscond and interfere in the trial.

In case the petitioner violates any terms and conditions on which the bail has been granted to him, the prosecution would be entitled to apply for cancellation of his bail.

The petition is allowed accordingly.

(DEEPAK MANCHANDA)
JUDGE

19.05.2023
seema

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes /No</i>