

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-11359-2022

Date of Decision:-25.01.2023

Rafakat Ali.

.....Petitioner.

Versus

State of Haryana.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Dinesh Sharma, Advocate &
Mr. Manoj Sharma, Advocate for the Petitioner.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

Mr. G.C. Shahpuri, Advocate for the Complainant.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.129 dated 24.12.2020 under Sections 302 and 201 IPC registered at Police Station Sector 17, HUDA, Jagadhari, District Yamuna Nagar, Haryana.

2. The present FIR came to be registered at the instance of Sunil Punia, who stated that his brother Anil Punia who was wearing a brown coloured jacket and a Khakhi pant along with a muffler and footwear of dark colour without informing anybody left the house on 21.12.2020. His phone was switched off and his family was waiting for him at the house. Since he had not returned back, a search may be conducted and legal action be taken.

Based on the said application, the aforementioned FIR came to be registered under Section 346 IPC.

Thereafter as no trace was found of the missing Anil Punia, the investigation of the case was carried out by CIA Yamuna Nagar. During the

course of investigation statements of witnesses were recorded. CDRs of mobile phone no.9215600025 of Anil Punia and other relevant phone numbers were collected.

Meanwhile, Jyoti wife of Anil Punia gave a complaint to the Police Station Sector 17, HUDA, Jagadhari to the effect that her husband Anil Punia was missing since 21.12.2020. Rafakat Ali-petitioner and his brother had borrowed an amount of Rs.10 lacs from her husband and they assured to return the same by 16.12.2020. They promised to give him Rs.12 lacs. The conversation regarding the same took place on Whatsapp between the petitioner and her husband on 21.12.2020. The petitioner and his brother also spoke with her husband Anil Punia on Whatsapp after which he left the house stating that he would come to village Naharpur with Rafakat who was to return the borrowed amount to him (Anil Punia). Anil Punia had left the house at 5.45 pm alongwith Rafakat and this was seen by her (Jyoti). Since her husband was not traceable ever since, she had an apprehension that the petitioner and his brother had something to do with the disappearance of her husband.

The petitioner was summoned to join investigation and was arrested on 12.01.2021. He suffered a disclosure statement that he had borrowed money from Anil Punia but did not return the same. He, therefore, had an apprehension that Anil Punia would quarrel with him. He had a plan in his mind that after borrowing the money he would kill him. On 03.12.2020 he borrowed a sum of Rs.8 lacs in cash from Anil Punia with a promise that he would return the same along with the interest. On 21.12.2020 Anil Punia purchased liquor, Namkeen and glass from a liquor vend of Sector 17, HUDA, Jagadhari main road after which both of them went towards village Naharpur on the pretext that he (petitioner) would make the payment to Anil Punia. At Khajuri Canal bridge, since Anil Punia was under intoxication, he (petitioner) gave multiple iron rod blows on the head and face of Anil Punia and threw the body into the canal. The slippers and muffler of Anil Punia had fallen at the spot which were hidden there under the bushes. He stated when he was dragging the body of Anil Punia, at that time blood splatters were smeared on his blue coloured jeans and shoes. The petitioner also disclosed that he had borrowed Rs.5 lacs from Anil Punia and can get the same recovered.

The recovery of the phone of the petitioner was effected and it was found that the Whatsapp call history and previous call history had been deleted. The CDRs of mobile phone of Anil Punia and the petitioner were obtained. The petitioner also got recovered the iron rod used by him and pair of shoes, pant and shirt which he was wearing at the time of occurrence along with a motor cycle no.HR02AT-6994. He also got recovered Rs.5 lacs in cash along with sandals and muffler of Anil Punia.

Based on the aforementioned evidence, Section 346 IPC was deleted and Section 302 IPC was added.

It was also revealed that during the course of investigation that Anil Punia and his wife had availed various loan amounts to advance to the petitioner as a loan. The photocopies of the relevant documents are a part of the investigation.

Despite investigation, the dead body was not found.

An application was also moved for getting the necessary permission to get done the Narco Test, Brain Mapping Test and Lie Detector Test of the petitioner but the petitioner refused to get the same conducted.

CCTV footage of the liquor vend was obtained where Anil Punia was seen purchasing the bottle of liquor on the day of occurrence.

3. The Counsel for the petitioner contends that a reading of the FIR makes it clear that no suspicion was raised against anyone. Even the last seen theory was not made out in the present case. No CCTV footage was collected by the investigating agency. The call details of the mobile numbers did not further the case of the prosecution. The dead body of the deceased was also not recovered. The loan transaction between the petitioner and the deceased has not been established. Since the petitioner was in custody since 12.01.2021 and only some of the prosecution witnesses had been examined so far, the further incarceration of the petitioner was not required. The counsel for the petitioner had placed reliance upon ***Paramvir Singh Saini Vs. Baljit Singh & Ors. Law Finder Doc Id# 1815292, Maulana Mohd. Amir Rashadi Vs. State of U.P. & Anr. 2012(1) RCR (Criminal) 586, Rahul @ Rahul Adawal Vs. State of Haryana 2021(1) RCR (Criminal) 353 & Prabhakar Tewari Vs. State of U.P. & Anr. 2020(1) RCR (Criminal) 831.***

4. The Counsel for the State on the other hand has filed reply dated 22.01.2023 of Mr. Rajiv Kumar, HPS, DSP, Yamuna Nagar, which is taken on record. While referring to the reply he contends that the case is based on circumstantial evidence. The CCTV clearly shows that the deceased Anil Punia was purchasing liquor from a liquor vend. The said fact is a direct corroboration to the disclosure statement got recorded by the petitioner. Rs. 5 lacs came to be recovered at the instance of the petitioner which is stated to have been given to him by the petitioner. The statement of Jyoti wife of Anil Punia has been recorded as PW-5 in which she stated that she had seen her husband going with the petitioner on the day of occurrence i.e. 21.12.2020. Merely, because the body has not been found does not in any manner entitle the petitioner to the grant of bail in view of the other evidence available against him. He also contends that the petitioner has criminal antecedents with one other FIR No.80 dated 30.11.2008 under Sections 148, 149, 323, 285, 452, 307, 302, 324, 336, 427, 506, 326 IPC and 25-54-59 of Arms Act registered against him in which he stands convicted. He thus contends that the petitioner was not entitled to the grant of bail.

5. The Counsel for the complainant has vehemently opposed the bail application stating that the investigation has *prima facie* established the culpability of the petitioner. Since 16 out of 21 prosecution witnesses already stand examined, therefore, the petitioner was not entitled to the grant of bail as there has been no delay in the progress of the Trial. Even otherwise the material witnesses had supported the prosecution case.

6. I have heard learned Counsel for the parties.

7. Admittedly, the case is based on circumstantial evidence. The evidence is being recorded in the present case. PW-5 Jyoti wife of Anil Punia has supported the case of the prosecution to the extent that she has seen her husband going with the petitioner on the day of occurrence. The trial is at the fag end with 16 out of 24 prosecution witnesses already having been examined. The nature of the allegations and the stage of the Trial do not entitle the petitioner to the grant of bail. So far as the judgments relied upon by the counsel for the petitioner are concerned, they do not further his case for the grant of bail in any manner whatsoever and are clearly distinguishable on facts.

8. In view of the above, I find no merit in the present petition and the same is hereby dismissed.

However, it is made clear that the observations made in the present order are only for the purposes of deciding this bail petition and shall have no bearing on the Trial.

(JASJIT SINGH BEDI)
JUDGE

January 25, 2023
Vinay

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