

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

Date of decision : 21st of July, 2023

CRM-M-12145-2022

Kailash

....Petitioner

Versus

State of Haryana

...Respondent

CRM-M-23090-2022

Deepak @ Deepu

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. G.S. Sandhu, Advocate
for the petitioner in CRM-M-12145-2022.

Mr. Sandeep Kotla, Advocate
for the petitioner in CRM-M-23090-2022.

Mr. A.K. Sehrawat, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

By way of this common order, I intend to dispose off the afore-captioned two petitions filed under Section 439 Cr.P.C. seeking regular bail on behalf of the petitioners in case F.I.R. No.311 dated 13th of October, 2020 registered for the offences punishable under Sections 302, 201 & 34 of the Indian Penal Code, at Police Station Sector-29, Panipat, District Panipat.

2. Initially FIR under Section 346 IPC was registered on the complaint made by one Jasbir Singh Namberdar alleging that his uncle

(Chacha) namely Janeshwar was missing from his house since 5th of October, 2020. The precise contents of the complaint read as under :

“To SHO Police Station Sector-29 Panipat dated 30.10.2020. Subject:- For searching the missing person. It is humbly submitted that I, Jasbir Namberdar son of Sh. Ram Singh Namberdar is resident of Village Passina Khurd District Panipat, Post Office Passina Kalan and belongs to Gujjar Community. Janeshwar son of Lattur, height 5' 7”, who was wearing white Shirt (Kurta) with white Dhoti and slippers, colored wheatish, age 60 years, resident of Passina Khurd District Panipat, Post Office Passing Kalan, who is my paternal uncle in relation, is missing from his house since 05.10.2020. Kindly search be conducted. It will be very kind of you. Thanks Sd/ - Jasbir Namberdar.”

3. From the records, it is discernible that on 15th of October, 2020 dead-body of missing Janeshwar was discovered on Rohtak Flyover in village Siwah. On 19th of October, 2020, prosecution claims that the complainant Jasbir Singh suffered a supplementary statement to the following effect :

“Stated that I am resident of above said address. I do the agriculture work. My father has four brothers. My uncle Janeshwar age 60 years is unmarried. My uncle Janeshwar had left the house without any intimation on 05/10/2020 but he has not been found even after making repeated search. I have presented a complaint to this effect on 13/10/2020 and got lodged an FIR. The dead-body of my uncle Janeshwar was met on 15/10/2020 at Rohtak Flyover in the area of Village Sewah and his post-mortem was got conducted by the police from Civil Hospital, Panipat on 16/10/2020. Now we have come to know that my uncle Janeshwar was taken on 05/10/2020 by Deepak @ Deepu S/o Dhanpat R/o

Village Passina Khurd and Kailash S/o Tejuram R/o Passina Khurd on their bike. My uncle was administered alcohol by these two persons and committed his murder by drown in the Haud of water. Deepak and Kailash are run away from their house since that day. It is requested that legal action may please be initiated by registering FIR of murder against Kailash and Deepak and justice may please be provided to us. I have recorded my statement, considered as correct.”

4. Statement of one Sethpal was also recorded to the similar effect. From the reading of statement alleged to have been suffered by Sethpal and the complainant Jasbir Singh, it is evident that both are claiming to have knowledge of deceased having seen in the company of Deepak @ Deepu only on the basis of hearsay and the source of their knowledge is not forthcoming. Prosecution further relies upon the extra judicial confession alleged to have been made by the petitioners wherein they claim to have eliminated the deceased by drowning him. Counsels for the petitioners have argued that the report from Forensic Science Laboratory Haryana, Madhuban Karnal which has been placed on record as Annexure R-5 rather demolishes the whole case as the story of drowning the deceased and thus causing his death has come under cloud in view of the result of the examination which reads as under :

“RESULT OF EXAMINATION

Diatoms were detected in exhibit-6 (Water sample). However, diatom could not be detected in exhibit-5 (Sternum).”

5. Counsels for the petitioners further submit that the custody of

both the petitioners is more than 2 years and 9 months and there are no criminal antecedents of both of them apart from being involved in minor offence of Section 323 IPC.

6. State Counsel does not dispute the afore-stated factual assertions based on record.
7. Without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioners, the present petitions are allowed. The petitioners are ordered to be released on bail on their furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.
8. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.
9. A copy of this order be kept on the file of other connected case.

July 21, 2023
Dpr

(Pankaj Jain)
Judge

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