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

CRM-M-13241-2023 (O&M)
Date of Decision: 13th July, 2023

Sharafat Ali

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Ghulam Nabi Malik, Advocate
for the non-applicant/petitioner.

Mr. Rupinder Singh Jhand, Addl. A.G., Haryana.

Mr. Raj Sumer Malik, Advocate
for the applicant/complainant.

HARSH BUNGER J.

CRM-18607-2023

The present application is filed for placing on record Annexure A-1 to Annexure A-3.

For the reasons mentioned in the application, the same is allowed and Annexures A-1 to A-3 are taken on record, subject to all just exceptions.

CRM-M-13241-2023

Petitioner (Sharafat Ali) has filed the instant petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No.08 dated 09.01.2021 registered under Section 346 of the Indian Penal Code (deleted later on) and Sections 302, 364, 120-B, 201 read

with Section 34 of the Indian Penal Code (added later on) at Police Station Gandhi Nagar, District Yamuna Nagar.

2. Upon issuance of notice, reply dated 18.04.2023 by way of affidavit of Rajiv Kumar, H.P.S., Deputy Superintendent of Police, Yamuna Nagar on behalf of respondent/State of Haryana has been filed by the learned State counsel which is already on record.

3. Custody certificate dated 13.05.2023 of the petitioner has been filed by learned State counsel in the Court, which was taken on record vide order dated 15.05.2023.

4. Briefly, the aforesaid case FIR was registered on the complaint of one Ashraf son of Yakub, wherein it has been alleged that his younger brother-Azim son of Yakub was working at G.K. Medical Store, Yamuna Nagar and on 07.01.2021 at 08:00 in the morning, his brother went to his work on his motorcycle bearing No. HR-02Z-4863 (Mark Splendor), however, he has not come back home till that day (09.01.2021). It was stated that his brother had gone from home without informing and his mobile phone (8930260637) is stated to have switched off. After describing the features of his brother, it was stated that his brother be searched and appropriate action be taken. On the basis of the aforesaid complaint, the abovesaid case FIR No.08 dated 09.01.2021 (Annexure P-1) was initially registered under Section 346 of the Indian Penal Code.

5. As per the reply, after registration of the aforesaid case, missing Azim was searched at different places, however, he was not found. It is stated that on 19.02.2021, complainant-Ashraf had come to Police Station, Gandhi Nagar and he gave a DVD containing his conversation with some woman regarding his brother-Azim along with a certificate under Section

65-B of the Evidence Act, which was taken into police possession. The complainant-Ashraf is stated to have recorded his supplementary statement that on 16.01.2021 at about 01:20 P.M, he received a call on his mobile No.9528621642 from another mobile No.9354408681. The woman who had made call had told that his brother-Azim was with her and she was under age and that they will return within 2-3 months after performing marriage. In the supplementary statement, it was stated by the complainant that despite requesting several times, the said woman did not allow him to talk to his brother, however, he had recorded the conversation in his mobile. When the complainant again made a phone call on the said mobile number then a boy picked up the call and told that he is a street vendor in Saraswa and one man and woman had come to him and on the asking of the woman, he has given his mobile to her for making a phone call, which she made after going at some distance from him and he does not know as to whom she made phone call and thereafter, she went away. As per the complainant, after hearing the recorded phone call repeatedly, he was sure that the voice was that of Asha Rani, a friend of Sharafat and phone call was made by her at the instance of Sharafat, who had beaten his brother-Azim about 5-6 years ago on account of the fact that Azim used to tease his niece (*bhanji*) Nashreen.

As per the reply, Sharafat Ali (petitioner), Ishrara @ Bhura and Aadil were arrested on the basis of the supplementary statement of the complainant and upon interrogation they disclosed that they had killed Azim and threw his body in Yamuna canal with his motorcycle. As per the reply, the dead body of Azim was recovered on 08.02.2021 and motorcycle was recovered on 23.02.2021 from Yamuna canal.

6. The petitioner approached the Court of learned Additional

Sessions Judge, Yamuna Nagar, seeking regular bail; however, the same was rejected vide order dated 28.02.2023 (Annexure P-5). Accordingly, the present petition has been filed by the petitioner before this Court under Section 439 Cr.P.C. seeking regular bail.

7. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the instant case. It is submitted that initially the FIR was registered under Section 346 of the Indian Penal Code on the basis of statement of complainant (Ashraf) who has stated that his brother was missing since 07.01.2021. It is further submitted that a perusal of the FIR would show that nothing has been stated regarding any doubt against anyone or any dispute of Azim with any of the accused. Learned counsel submits that the petitioner is being falsely implicated on the basis of supplementary statement of the complainant (Ashraf) made on 19.02.2021 and the petitioner along with other co-accused namely Aadil and Israr @ Bhura was arrested on 21.02.2021. It is submitted that the motorcycle bearing No. HR-02Z-4863 allegedly belonging to Azim was recovered from Western Yamuna canal on 23.02.2021 with the help of a diver but the body of Azim was not recovered. It is contended that a dead body was recovered from canal on 08.02.2021 and the said unclaimed body was taken to the hospital and postmortem was conducted and thereafter, the body was cremated on 11.02.2021 after taking DNA samples. It is contended that in the postmortem report, the description of the body and the clothes is given as follows:

<i>Height:</i>	<i>5'8"</i>
<i>Trouser:</i>	<i>Grey</i>
<i>Jersey:</i>	<i>Black and white strips</i>

It is submitted that the prosecution story is false and frivolous as the description of Azim given in the FIR is totally different from the description of the unclaimed body. In the FIR, the height of Azim is stated to be 5'6" and he was stated to be wearing blue jeans and red jersey on 07.01.2021, whereas, the unclaimed body was of height 5'8", wearing grey trousers and black and white striped jersey. Learned counsel for the petitioner submits that the entire story is created by the police just to falsely implicate the petitioner. It is also the contention of learned counsel for the petitioner that on 10.03.2021, the public prosecutor has moved an application before the trial Court for obtaining DNA samples of mother of Azim so that the same could be compared with the DNA of the body recovered on 08.02.2021, however, as per the DNA report received from the Forensic Science Laboratory, the samples of mother of Azim cannot be compared with the sample of the body recovered on 08.02.2021.

8. Learned counsel for the petitioner submits that the petitioner was arrested in this case on 21.02.2021 and since then he is in custody. It is submitted that the investigation in this case is complete; challan stands presented and even charges have been framed and the trial is likely to take long time and no useful purpose would be served by keeping the petitioner behind the bars any further. It is further submitted that co-accused Ishrara Ali @ Bhura, Asha Rani and Aadil have already been granted the concession of bail. Learned counsel for the petitioner has handed over the copies of the orders passed by Co-ordinate Benches of this Court granting regular bail to Israr Ali @ Bhura and Asha Rani which are taken on record, subject to all just exceptions and are marked as "Mark-A". Learned counsel further submits that the petitioner is ready to abide by all the conditions as may be

imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

9. Per contra, learned State counsel has opposed the prayer made by the petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. While referring to the reply, learned State counsel submits that there is sufficient material on the case file to show the complicity of the petitioner in the alleged crime. It is further submitted that since the allegations levelled against the petitioner are serious in nature, accordingly there is strong apprehension that if the petitioner is released on bail then he may tamper evidence by threatening or influencing the prosecution witnesses or may abscond and flee from justice which may delay the trial; accordingly, prayer for dismissal of the petition has been made. However, learned State counsel has not disputed the fact that the petitioner is in custody since 21.02.2021 and also that other co-accused have been granted bail.

10. Learned counsel for the complainant filed an application bearing CRM No.18604 of 2023 for placing on record photographs of the deceased and necessary documents as Annexures A-1 to A-3. Learned counsel for the complainant has opposed the prayer for bail of the petitioner by referring to the photographs in Annexure A-1 and Annexure A-2. It is argued that the clothes worn by Azim in the said photographs (Annexure A-1) are similar to the clothes which were worn by the dead body as per the postmortem report and as reflected in photographs (Annexure A-2). He submits that in the present case, it is established that the dead body was of Azim and the complainant has identified the dead body of his brother, accordingly, prayer for dismissal of the petition has been made.

11. I have heard learned counsel for the parties and perused the paper book as well as the reply filed on behalf of the respondent/State.

12. In the present case, the petitioner is in custody since 21.02.2021. As per the reply, the investigation in the case is complete, challan stands presented and even charges have been framed. Out of 39 prosecution witnesses, 9 witnesses have already been examined, thus, conclusion of trial is likely to take some time. The petitioner is stated to be not involved in any other case. The issue as to whether the recovered body is of Azim or not would be a subject matter of trial, more so, when in the FIR, the height of the deceased is stated to be 5'6" and on the other hand, as per the postmortem report, the height of the dead body recovered is stated to be 5'8". Apart from the above, initially the FIR was registered under Section 346 of the Indian Penal Code on 09.01.2021 wherein, the deceased (Azim) was stated to be missing and the petitioner was not named in the said FIR. However, the petitioner has been nominated as an accused on the basis of the supplementary statement of the complainant recorded on 19.02.2021. The petitioner has undergone total custody of 2 years, 2 months and 18 days (as on 13.05.2023). The other co-accused namely Aadil, Asha Rani and Israr Ali @ Bhura have already been extended the concession of regular bail vide orders dated 14.02.2023, 29.03.2023 and 10.04.2023 respectively passed by Co-ordinate Benches of this Court in CRM-M-6123-2022, CRM-M-55586-2022 and CRM-M-60388-2022.

13. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by petitioner, suffice it to state that in the event of any such conduct, the prosecution can always approach the competent court for cancellation of bail. Accordingly, it is observed that the

State / Prosecuting Agency / State police shall be at liberty to observe the behaviour of the petitioner during bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State / Prosecuting Agency / State police to move the trial Court for cancellation of bail, which shall be decided by the trial Court on merits.

14. In view of the above circumstances, the present petition under Section 439 Cr.P.C. seeking grant of regular bail to the petitioner (Sharafat Ali) in case FIR No.08 dated 09.01.2021 registered under Section 346 of the Indian Penal Code (deleted later on) and Sections 302, 364, 120-B, 201 read with Section 34 of the Indian Penal Code (added later on) at Police Station Gandhi Nagar, District Yamuna Nagar; is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate / trial Court concerned.

15. However, before release, the concerned Station House Officer be informed and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of the case and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would furnish his telephone number to the concerned Station House Officer and would keep his mobile location on. Petitioner shall appear before the police station concerned on first Monday of every month till the conclusion of trial in this case and every time inform in writing that he is not involved in any other crime other than the case(s) mentioned in the present order.

16. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the trial Court. The same would be liable to be forfeited as per law, in case of absence of the petitioner from trial without sufficient cause.

17. Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

18. The petition is accordingly disposed of.

19. Pending application/s, if any, shall also stand disposed of.

13th July, 2023

Himani

**(HARSH BUNGER)
JUDGE**

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| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |