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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-13860-2023 (O & M)****Date of decision: 23.03.2023**

Nishu

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr.Sandeep Saini, Advocate,
for Mr. Sahil Chaudhary, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.677 dated 10.08.2020 under Sections 302, 201, 34 IPC registered at Police Station City Jagadhri, District Yamuna Nagar.

2. The present FIR came to be registered at the instance of Rekha Rani, who stated that her son Vaibhav Kumar who was a photographer had left the house on 09.08.2020 after taking his camera. He had gone by stating that he would return within two hours. His motor cycle number was HR02AF-3153 make Platina and his mobile number was 9729443952. When he did not return by 4.00 p.m., she made a call on his mobile number and found that his phone was switch of.

Based on the aforementioned statement, on 10.08.2020, the aforementioned FIR came to be registered under Section 346 IPC.

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Thereafter, the body of Vaibhav Kumar (deceased) was found on 11.08.2020 and the offence under Section 302 IPC was added. As per the post-mortem report, three sharp injuries were found on the body and the cause of death was stated to be the injury no.1.

The statement of Baldev Singh son of Jyoti Prasad, grandfather of the deceased was recorded to the effect that on 09.08.2020, his grand son received a call, pursuant to which, he left home. His own inquiry revealed that Sonu Saini (since granted the concession of bail vide order dated 24.01.2023 passed in CRM-M-43444-2022) had called up his grand-son stating that he (Sonu Saini) wanted the deceased to make a movie of a song because of which his grand-son had been called to Industrial Area, Manakpur. Based on the said statement, Sonu Saini was nominated as an accused.

Thereafter, Pankaj Kumar and Nishu (petitioner) were nominated as accused and all the three accused joined investigation and were arrested. They suffered their respective disclosure statements. As per the disclosure statement, they committed the offence and snatched the Videography Camera of the deceased.

On 15.08.2020 Nishu (petitioner) got recovered a *Parna (towel)* purportedly used for strangulation. The co-accused Pankaj Kumar @ Amit got recovered a handkerchief which was used in the commission of offence. The co-accused Sonu Saini is stated to have got recovered a cutter wrapped in a handkerchief from his residential house which was taken into police possession. Thereafter, the accused-Pankaj @ Amit got recovered a bag of black colour containing a camera make CANON along with lens, mike, lead,

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battery charger etc. The said articles were duly identified by one Shubham who is stated to have loaned the same to Vaibhav (deceased).

The CDRs pertaining to the mobile phones were taken into possession.

3. The learned counsel for the petitioner contends that the deceased went missing on 09.08.2020. The FIR was registered on 10.08.2020. Thereafter, the grand-father of the deceased made a statement on suspicion that on 12.08.2020, Sonu Saini (since granted the concession of bail vide order dated 24.01.2023) had made a phone call to the deceased on 09.08.2020 asking him to come to Industrial Area, Manakpur in order to make a movie of a song. Subsequent thereto, pursuant to the arrest of Sonu Saini, the petitioner and his co-accused Pankaj Kumar were nominated as accused. A *parna* has been recovered from the petitioner and since there was no strangulation mark on the neck, the said recovery cannot be connected with the offence in question. As the petitioner was in custody since 13.08.2020 and only 03 of the 30 prosecution witnesses had been examined so far, the Trial of the present case was not likely to be concluded anytime soon, therefore, the petitioner was entitled to grant of bail, *moreso*, when the co-accused, namely, Sonu Saini has been granted the similar concession.

4. The learned counsel for the State, on the other hand, contends that the case of the petitioner is based on the circumstantial evidence. The petitioner alongwith his co-accused called up the deceased and thereafter in order to steal his camera committed the offence in question. There was evidence to suggest that all the accused were present alongwith the deceased

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has taken place as set-up by the prosecution. Therefore, the petitioner did not deserve the concession of bail. He, however, admits the period of custody undergone by the petitioner as also the fact that 03 of the 30 prosecution witnesses have been examined so far and that the petitioner is a first-time offender.

5. I have heard the learned counsel for the parties at length.

6. Admittedly, the case is based on circumstantial evidence. The evaluation of the evidence available with the prosecution shall be adjudicated upon during the course of the Trial. At this stage, the petitioner is in custody since 13.08.2020. Only 03 out of the 30 prosecution witnesses have been examined so far. He is a first-time offender. As such, the further incarceration of the petitioner is not required, moreso, when his co-accused, namely, Sonu Saini, has been granted the concession of bail vide order dated 24.01.2023.

7. In view of the above, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Nishu, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any case other than the present one.

9 In addition, the petitioner (or someone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of

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10. If any attempt whatsoever is made by the petitioner and/or his family members/friends to contact/threaten/intimidate any of the witnesses of the present occurrence, the State/complainant shall be at liberty to move an application for cancellation of bail granted vide this order.

(JASJIT SINGH BEDI)
JUDGE

March 23, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No