

CRM-M-21790-2023

2023:PHHC:101118

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(223)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-21790-2023

Date of Decision: 04.08.2023

RAHUL YADAV

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CRM-M-33479-2023

SHANKAR SHARMA

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Dinesh Sharma, Advocate and
Mr. Nikhil Mittal, Advocate
for the petitioner in CRM-M-21790-2023.

Mr. Abhilaksh Grover, Advocate
for the petitioner in CRM-M-33479-2023.

Mr. Neeraj Poswal, Asst. A.G., Haryana.

JASJIT SINGH BEDI, J.

By this common order two petitions bearing No.CRM-M-21790-2023 titled as Rahul Yadav Versus State of Haryana and CRM-M-33479-2023 titled as Shankar Sharma Versus State of Haryana are being disposed off as these petitions are arising out of the same FIR.

2. The prayer in the present petitions under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.112 dated 15.05.2022 registered under Sections 148, 149, 302, 307, 323, 427, 379, 201, 506, 120-B IPC at Police Station Buria, District Yamuna Nagar, Haryana.

3. The brief facts of the case are that Deepak son of Vikram got recorded his statement to the effect that he along with Aman, Aludeen, Suleman, Sahil Verma, Ravi Saini, Ishu Arora, Nikhil Gupta, Sunny Saini, Shaukin and Sahil alias Dhed had gone to Grain Market Jagadhri in a Tata Safari of Aman bearing No.HR02T-9577 to attend the rally of a political party. After attending the same, they all had gone towards Buria Canal for taking a bath. They had parked their Tata Safari on the Kacha path and some of them had started taking a bath while the others were standing around. Ishu had started drinking beer whereas Alaudin, Nihal, Sunny, Suleman, Sahil Dhed, Sahil Verma and Shaukin had entered the river for taking a bath. The others were standing on the river bank. At about 01.30 PM, Bhartu, Gaurav alias Goru, Mani Rana @ Dhanna, Gaurav @ Mahadev, Pavva, Arju, Lukka Balmiki, Gaurav Bakrewala, Sammi @ Harbhajan, Aman Rana and Sandeep Pandit, Aftab Alam and Laddu along with other boys came on motorcycles carrying rods in their hands. Seeing the accused, the other persons also entered the canal. However, the accused started throwing bricks and stones on them (complainant party). One stone hit on the right leg of Aman and he came out and ran towards the fields. However, Sandeep caught him and gave a rod blow which hit him on his left leg. The rest of his companions were still inside the canal. Out of them Aludeen, Suleman, Nikhil, Sunny and Sahil Dhed could not come out of the water and drowned in the canal while the others came out from the canal and after running some distance hid themselves. Then Ishu made a call to the police help line and by the time the Police party came to the spot, the accused had broken the window panes of

their (complainant party) car with rods and had also taken away the mobile phone of Aman. Thereafter, the accused fled away from the spot.

Based on the aforementioned statement, the instant FIR No.112 dated 15.05.2022 under Sections 148, 149, 302, 307, 323, 427, 379, 201, 506, 120-B IPC Police Station Buria, District Yamuna Nagar, Haryana came to be registered. During the course of investigation, the Tata Safari bearing Registration No.HR02T-9677 was taken into possession and the search of the same revealed a sword, three iron pipes and clothes of the drowned persons. A search of the drowned persons was made and on 16.05.2022, the dead bodies of Nikhil and Sahil alias Dedh were found. Thereafter, the dead body of Suleman alias Nura was found along with Alaudin's body on 17.05.2022 and Sunny's body on 18.05.2022. The cause of death in each case was '*the cause of death in this case in my opinion is asphxia due to drowning which is sufficient to cause death in due course of events*'. It was also found that some of the deceased had received simple injuries and Aman, Deepak, Sahil Verma, Ishu and Shaukin had also received injuries.

During the course of investigation, accused Sahil alias Pavva, Sandeep alias Pandit, Ajrudeen alias Dawood were arrested on 19.05.2022. The accused Sahil alias Pavva got recovered a motorcycle bearing No.HR02AS-4727 whereas the accused Sandeep alias Pandit got recovered an iron rod pipe and Ajrudeen alias Dawood got recovered a Danda. These accused also disclosed that they along with Bhartu alias Bharat, Gaurav alias Mahadev, Lavdeep, Jatin alias Kalu, Rahul Yadav (petitioner in CRM-M-21790-2023), Shammi alias Harbhajan, Sandeep alias Laddu, Lucky, Saurabh Pandit (petitioner in CRM-M-33479-2023) and Preet Rana had committed

the offence in question whereas Gaurav alias Goru, Lukka Balmiki, Gaurav Bakrewala, Aman Rana and Aftab Alam who had been named in the FIR were not involved in the said occurrence.

Rahul Yadav (petitioner in CRM-M-21790-2023) and Kanwaljeet alias Preet Rana were arrested on 22.05.2022 and the petitioner got recovered an iron pipe purportedly used by him in the occurrence. Kanwaljeet Singh alias Preet Rana disclosed that he had pelted stones on Aludeen and his friends.

The accused Sandeep alias Laddu and Dimple alias Gora Mahadev were arrested on 24.05.2022 and got recovered a car bearing No.HR02AA-1494 along with iron pipes used by them in the occurrence. Accused Lovedeep alias Laddi and Jatin alias Kalu were arrested on 25.05.2022. Lovedeep alias Laddi disclosed that he had stolen a mobile phone from the place of occurrence which had been thrown away by him. On this, Sections 379, 201 IPC were added. Lovedeep alias Laddi got recovered a wooden Binda used by him in the occurrence. Jatin alias Kalu got recovered an iron pipe used by him in the occurrence.

During the course of investigation information regarding the ownership of motorcycle bearing No.HR02AS-4727 and car No.HR02AA-1494 which were used in the occurrence were collected and it was found that the ownership of the motorcycle bearing No.HR02AA-1494 was in the name of Ram Dayal, the father of Rahul Yadav (petitioner in CRM-M-21790-2023) and the ownership of the car bearing No.HR02AA-1494 was in the name of Sandeep Masih who had already been arrested.

Shankar Sharma alias Saurabh Pandit (petitioner in CRM-M-33479-2023) was arrested on 16.07.2022 and got recovered a motorcycle No.HR02AG-7311 make Bullet which was found to be registered in the name of the petitioner himself.

Lucky was arrested on 01.08.2022.

After completing the investigation, the report under Section 173(2) Cr.P.C. was submitted under Sections 148, 149, 323, 307, 302, 506, 120-B, 427, 379, 201 IPC against accused Sahil alias Pavva, Sandeep alias Pandit, Ajrudeen alias Dawood, Rahul Yadav (petitioner in CRM-M-21790-2023), Kanwaljeet alias Preet Rana, Sandeep alias Ladoo, Dimple alias Gora Mahadev, Lavdeep alias Laddi, Jatin alias Kalu, Shankar Sharma alias Saurabh Pandit (petitioner in CRM-M-33479-2023) and Lucky on 18.08.2022.

4. The learned counsel for the petitioners contend that the petitioners have been falsely implicated. In fact, they have not been named in the FIR. Their names figure in the disclosure statement of their co-accused. Taking the allegations to be true, no specific role has been attributed to them. Out of the 13 accused named in the FIR, only 06 were charge-sheeted along with 07 others whose names were purportedly disclosed during the course of investigation. Therefore, the Investigating Agency had not conducted the investigation fairly. All the deceased had died on account of drowning as was evident from their postmortem reports. The injuries which had been suffered by some of the deceased were on account of the fact they had jumped into the water and consequential contact with a hard/rough surface and not on account of the petitioners inflicting those injuries. So far as the injured

witnesses were concerned, they were examined after 11 hours of the alleged incident and all of them had complaints of pain without any external injuries. As the petitioners were young boys, in custody since 22.05.2022 and 16.07.2022 respectively and none of the 42 prosecution witnesses had been examined so far, they were entitled to the concession of bail, moreso, as they were first-time offenders with clean antecedents.

5. A reply dated 01.08.2023 by way of an affidavit of Parmod Kumar, HPS, Deputy Superintendent of Police, Yamuna Nagar has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He contends that as many as five persons died in the present occurrence. They were unable to come out of the water due to the pelting of stones etc. leading to their death by asphyxiation. Therefore, the petitioners were not entitled to the grant of bail. He, however, concedes that the petitioners were not named in the FIR were in custody since 22.05.2022 and 16.07.2022 respectively and none of the 42 prosecution witnesses had been examined so far.

6. I have heard the learned counsel for the parties and examined the record.

7. The veracity of the prosecution case against the petitioners and their co-accused shall be a matter of adjudication during the course of trial. Admittedly, none of the petitioners were named in the FIR. Their names figure in the disclosure statement of their co-accused. The recovery of an iron rod and motorcycle respectively has been effected from the accused. The petitioners are young students and are in custody since 22.05.2022 and 16.07.2022 respectively. None of the 42 prosecution witnesses have been

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examined so far. Therefore, the trial of the present case is not likely to be concluded anytime soon. In such a situation, their further incarceration is not required, moreso, as they have clean antecedents with no other case registered against them.

8. Thus without commenting on the merits of the case, the present petitions are allowed and the petitioners are ordered to be released on bail on their furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioners 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 they are not involved in any other case other than the present case.

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

11. The petitions stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

04.08.2023

JITESH

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