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

**CRM-M-23631-2023
Date of decision : 14.12.2023**

ARVIND KUMAR

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Gourave Bhayyia Gilhotra, Advocate and
Mr. Hitesh Verma, Advocate for the petitioner.

Mr. Jaswinder S. Arora, DAG, Punjab

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.0080 dated 31st of May, 2021 registered for the offences punishable under Sections 302, 34 of the Indian Penal Code, 1860, at Police Station Division 7, District Police Commissionerate Ludhiana.

2. Custody Certificate of the petitioner has been filed today in Court. The same is taken on record.

3. FIR was got registered on the statement made by one Ravi Kumar son of Ramesh Kumar who happens to be the brother of the deceased to the following effect :

“xxx I am residing with my family at the above address. We are four brothers and sister and I am the elder one and Deepak Kumar

is younger to me and Karan who is youngest brother and thereafter we have younger sister Vishali. I used to work as a labourer at Railway Station. Now I am not physically fit and therefore stayed at home. I am married and I have a daughter who is aged about 4 years. My younger brothers stays with my parents at House No.1526, Sanjay Gandhi Colony. Today at around 9:00 in the night, I went to my brother's house to meet them, thereafter, at around 10:00 p.m. my brother Karan Kumar who is aged about 19 years, who is not married. After having dinner went for a walk, I went following Karan, thereafter near Gopal Temple one Esteem Car stopped, out of that car our neighbourer Amit Kumar and his brother Ravi sons of Satpal along with one another young person came, whom I can identify if seen by me again. Amit Kumar came out of the car, who had baseball bat in his right hand, who after coming out of the car told my brother Karan that you abused my brother while playing cricket, upon that my brother said that yes he has abused him, thereafter Amit Kumar along with his brother Ravi Kumar and along with that other person raised lalkara and said that today catch Karan Kumar so that he may be taught lesson for abusing my brother, thereafter Ravi caught hold both the arms of my brother and Amit Kumar with the help of the baseball bat attacked upon the right side of head of my brother, because of that my brother fell upon the road, thereafter I raised the voice saying that marta-marta, upon the same all three of them ran away from the spot along with their car and baseball bat. Thereafter, I took my brother Karan Kumar to Sector 32 Hospital Ludhiana, there doctor told that my brother's life is in danger and he was referred to CMC, thereafter I took my brother for the treatment to CMC Hospital, there doctors declared my brother dead. Amit Kumar along with his brother Ravi and along with one another person in conspiracy with each other killed my brother with the help of baseball bat, the reason/motive behind this is that my brother Karan Kumar along with other boys and Amit Kumar used to play cricket in the locality. Therefore there

was some verbal spat between them, therefore they have killed my brother Karan Kumar. Therefore, action may be taken against the accused and legal proceedings may be done. You have met at CMC Hospital and the statement has been recorded. xxx”

4. As per the prosecution on the same day i.e. on 31st of May, 2021 itself supplementary statement of the complainant was recorded and in support thereof the complainant presented CCTV footage in pendrive. On the basis of which present petitioner was nominated.

5. Counsel for the petitioner submits that though the petitioner was nominated. However on further inquiry/investigation conducted, SHO in communication to the Assitant Commissioner of Police, East, Ludhiana categorically submitted that in the video footage, Ravi Kumar, Subhash Kumar, Arvinder Kumar are not seen and thus they are being found to be innocent. Relevant para thereof reads as under :

“7. As per police file of the case and challan presented in the Hon'ble Court, CCTV footage of the spot on incident enclosed with the challan in which no Esteem car is seen on the spot. In this footage, Ravi Kumar, Subhash Kumar, Arvinder Kumar are not seen in this footage who were not involved in the quarrel/beating with Amit Kumar whose names have been included wrongly in this case and they are being made out to be innocent.”

6. Counsel thus submits that neither in the initial version the petitioner was named nor in the CCTV footage he is seen. He is behind bars for more than 2 years, 6 months and 10 days without there being any

incriminating evidence against him apart from the supplementary statement of the complainant. He further submits that by now only 2 out of 16 cited witnesses could be examined and out of those two also only one has been fully examined. Thus trial is not going to conclude in near future and the custody of the petitioner without there being any incriminating evidence cannot be prolonged as a punitive measure.

7. On the last date of hearing following order was passed :

“Counsel for the petitioner submits that the petitioner is not named in the FIR. However as per report under Section 173 Cr.P.C. it is claimed that the petitioner was seen in the CCTV footage. Reliance is being placed upon following observations :

“xxx Investigation of the spot and map got prepared separately and the complainant of the case recorded his statement before myself SI/SHO and CCTV footage was presented by Pan-Drive. Which was presented as proof vide memo of peshgi and taken in police custody. Signatures of witnesses and presenter were taken on the memo. On this, in the case Arvind Kumar and Subhash Kumar sons of Satpal, R/o Sanjay Gandhi Colony, Tajpur Road, Ludhiana and brother-in-law (sala) of Arvind Kumar were nominated in the case.xxx”

Further refers to inquiry alleged to have been conducted by one SHO who claimed as under :

“7) As per police file of the case and challan presented in the Hon'ble Court, CCTV footage of the spot on incident enclosed with the challan in which no Esteem car is seen on the spot. In this footage, Ravi Kumar, Subhash Kumar, Arvinder Kumar are not seen in this footage who were not involved in the quarrel/beating with Amit Kumar whose names have been included wrongly in this case and they are being made out to be innocent. xx”

State Counsel prays for time to ascertain the aforesaid fact.

On his request, adjourned to 14.12.2023.”

8. State Counsel was ordered to ascertain the fact w.r.t. submission made by counsel for the petitioner regarding the fact that the petitioner is not seen in the CCTV footage.
9. Today, State Counsel on instructions from SI Palwinder Singh concurs that *prima facie* the petitioner is not seen in the CCTV footage.
8. I have heard counsel for the parties and have gone through records of the case.
9. In view of above, without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and the fact that trial is not likely to conclude in the near future, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.
10. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

December 14, 2023
Dpr

(Pankaj Jain)
Judge

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