

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

CRM-M-24378-2023

Date of Decision:-18.05.2023

Dinesh Kumar.

.....Petitioner.

Vs.

U.T., Chandigarh.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. A.P. Kaushal, Advocate for the Petitioner.

Mr. A.M. Puncchi, Addl. PP U.T., Chandigarh.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.222 dated 17.11.2020 under Sections 302, 34 IPC registered at Police Station Sector 34, Chandigarh.

2. The present FIR was got registered against unknown persons on the written statement of Inspector Baldev Singh who stated that on 17.11.2020 at about 7.54 am a wireless information was received from the PCR that a dead body of a person was lying near the labour chowk, Sector 44, Chandigarh. Upon this information, the police party reached the spot and it was found that a dead body of a middle aged person was lying at the spot with head injuries. On verification the body was identified to be that of Jaspal working as a plumber at a labour chowk. It appeared that some unknown persons had struck the deceased with sharp edged object with an intention to kill him.

After the registration of the FIR, further investigation was

carried out. On 18.11.2020 one Dharminder @ Ganja met the police party and informed them that on 16.11.2020 at about 6.30-7.30 pm when he went behind the bushes to answer the call of nature, he observed Jaspal, Dinesh (petitioner), Anil @ Neelu and Parvinder sitting and consuming liquor. Thereafter during further investigation while the police party was present near Burail chowk one Jagwinder Singh Malik approached them with three persons and stated that on 18.11.2020 at about 1.50 pm he was returning from the Gaushala when those three persons approached him and confessed their guilt. On being asked they disclosed their names as Dinesh (petitioner), Parvinder and Anil Kumar @ Neelu. They admitted that they had killed deceased and requested to produce them before the Police. Accordingly, all the three were arrested. They got recorded their disclosure statements.

Pursuant to the investigation the report under Section 173(2) Cr.PC was presented.

3. The Counsel for the petitioner contends that no one is named in the FIR. The Case is based on circumstantial evidence. The only evidence available against the petitioner and his co-accused is the alleged extrajudicial confession made by the accused in the presence of Dharminder @ Ganja and Jagwinder Singh Malik. Extrajudicial confessions by their inherent nature are very weak piece of evidence and, therefore, as the petitioner was in custody since 18.11.2020 and only 01 out of 26 prosecution witnesses had been examined so far, two having been given up, the Trial of the present case was not likely to be concluded anytime soon and, therefore, the petitioner was entitled to the concession of bail.

4. The Counsel for the State on the other hand contends that the petitioner is one of the accused in a case of murder. The nature of

allegations levelled against the petitioner did not entitle him to the grant of bail. Even otherwise, the petitioner had tried to escape from custody for which FIR No.223 of 2020 was registered against him under Sections 224, 309 IPC. Therefore, he was liable abscond from justice in case he was granted the concession of bail. He however, concedes that out of 26 witnesses only 01 witness has been examined and 02 have been given up as also the fact that the petitioner is in custody since 18.11.2020 and does not have any criminal antecedents.

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

6. The veracity of the prosecution case against the petitioner and his co-accused shall be adjudicated upon during the course of the Trial. A perusal of the zimni orders would show that Dharminder @ Ganja one of the star witness is untraceable. In such a situation the Trial is not likely to be concluded any time soon. Even otherwise the petitioner is a first time offender, in custody since 18.11.2020 and only 01 out of 26 witnesses have been examined so far. Therefore, his further incarceration is not required.

7. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-**Dinesh Kumar** son of Sh. Lal Chand is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present one.

10. 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

the absence of the petitioner from trial without sufficient cause.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

May 18, 2023

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>