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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34466-2023 (O&M)

Date of decision:11.09.2023

Ram Kishore

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Abhimanu, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.427dated 27.08.2021, registered under Sections 302 read with Section 34, 363, 201, 404of IPC (Section 363 deleted later on) at Police Station, Palla, District Faridabad.

2. Prosecution case is based on a complaint of one Baleshwar. He stated alleged that his elder son, namely, Tanish, aged about 12 years, had gone outside the house for cycling on 26.08.2021 at about 5:00 p.m., but he never returned. Searching him all over didn't yield any result. An FIR was registered next day i.e. 27.08.2021 under Section 363 IPC. During investigation, on the same date i.e., 27.08.2021, dead body of Tanish @ Harsh was found near the bank of Yamuna River and same was identified by complainant. Complainant/father gave a supplementary statement that he and his neighbour, Sheesh Ram Awana came to know that his son had been murdered by an unidentified person by hitting him on his head and neck. Offence under Section 302 of IPC was added. Petitioner was arrested as a suspect on 29.08.2021 and since then he is in custody.

3. Learned counsel for the petitioner submits that there is no eyewitness of the alleged crime. He further submits that entire case of the prosecution is based on circumstantial evidence and conjectures and surmises. He submits that cycle and

Adhaar card of deceased were allegedly recovered from the hut located in the fields of complainant on 29.08.2021. The same were planted on petitioner who is a poor labourer. Petitioner has been wrongly implicated by police in their zeal to please the general public of the area that the crime has been solved, since they feared a backlash being a murder case of just 12 year old minor. He is uncle of the friend (juvenile co-accused-Rinku) of the deceased minor. A watch of the deceased was allegedly recovered from juvenile Rinku, basis thereof the entire narrative has been concocted by the prosecution, he contends. If at all, it is the juvenile who is the prime culprit for being together last with the deceased minor. He further urges that petitioner was not even named in the FIR as the same was registered against unknown persons. There is no motive or enmity attributed to the petitioner. Petitioner has no connection with the alleged offence.

3.1. Learned counsel for petitioner further refers to deposition dated 24.08.2022 of PW1 Baleshwar (complainant) contained at Annexure P-4, wherein in his cross-examination he testified that he would not know as to who had murdered his son and, that his son Harsh alias Tanish (since deceased) was seen by his wife last time when he went out from the house to ride a bicycle. Learned counsel further submits that there is no legal evidence to connect the petitioner with the alleged crime. The alleged confessional statement of petitioner before the police obtained under coercion is inadmissible in evidence being hit by Sections 25 and 26 of the Indian Evidence Act, 1872. No such statement was recorded under section 164 of the Cr.P.C. before a Magistrate. Same reflects that alleged custodial confessional statement obtained from the illiterate petitioner is not his. He further urges that suspicion, howsoever grave, cannot be treated as a proof.

3.2. He further canvasses that no recovery is to be effected from the petitioner. No specific role is attributed to the petitioner. He is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence

and/ or influencing prosecution witnesses. Petitioner is totally innocent and has thus been falsely implicated in the case.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. As per enquiry made against juvenile Rinku and disclosure statement of petitioner, same revealed that Rinku (juvenile) had put his feet on the neck of Tanish (deceased) and Ram Kishore (petitioner) twisted the neck of Tanish. He further submits that there are serious and specific allegations against the petitioner. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. On a Court query, per status report already on record, learned State counsel informs that challan was filed and charges were framed way back on 06.01.2022. Investigation is complete. Petitioner is not required for custodial interrogation. Out of 23 prosecution witnesses, four have been examined and now the case is fixed for 29.09.2023. Trial is likely to take some time to conclude as it is proceeding at a snail pace.

7. Allegations against petitioner are a matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has been languishing in jail for more than 02 years, being behind bars since 29.08.2021. He is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/ or influence witnesses.

8. Petitioner is stated to be 27-year old only bread earner of his family living in sheer penury in his absence. He is a labourer by profession. Petitioner is not flight risk in any manner.

9. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.
10. Accordingly, petitioner is ordered to be released on bail, if not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of Ld. trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.
11. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.
12. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.
13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

11.09.2023
vandana

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