

CRM-M-35965-2023 (O & M)  
(222)

::1::

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

**CRM-M-35965-2023 (O & M)**  
**Date of decision: 20.10.2023**

Sahil Kumar

.... Petitioner

V/s

State of Haryana

...Respondent

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

Present: Mr. Anmol Partap Singh Mann, Advocate,  
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

\*\*\*\*\*

**JASJIT SINGH BEDI, J. (Oral)**

The prayer in the present petition under Section 439 Cr.P.C. read with Section 101(5) Juvenile Justice Act is for the grant of regular bail to the petitioner in case FIR No.316 dated 13.07.2022 under Sections 302, 34 IPC (Sections 109, 120-B IPC added later on) registered at Police Station Bilaspur, District Gurugram.

2. The present FIR came to be registered at the instance of Krishan who stated that he had a younger brother Bhagwan who had died 6/7 years ago leaving behind a son and a daughter. The elder son Sumit @ Koki (deceased) was aged about 17½ years old and a student. A day prior on 12.07.2022, at about 3.30 p.m. when he (complainant) came home, he had found that Sumit was not there. On an enquiry, he came to know that Sumit had left home at about 12.30 p.m., by saying that he was going out with his friend Saurabh. When he (complainant) tried to call Sumit on his phone, it was found to be switched off. On calling Saurabh, no satisfactory reply was given by him. Then at night, he alongwith his cousin brother-

CRM-M-35965-2023 (O & M)  
(222)

::2::

Dharambir and friend-Ajay went to Saurabh's house at village Mokalwas. Saurabh misled them and stated that he had left Sumit at the Bus Stand of Mokalwas that evening itself. Despite searching, Sumit could not be found. Thereafter, on 13.07.2022, afternoon when he alongwith his family members reached Bus Stand, Mokalwas looking for Sumit, he was informed that on 12.07.2022, Saurabh was seen going on a motorcycle towards village Kaasan alongwith Sumit. On a search being conducted, the dead body of Sumit was discovered near a dilapidated house close to the KMP highway. On an enquiry, they (complainant party) found that Saurabh in connivance with some of his friends had murdered his (complainant's) nephew Sumit.

Saurabh alongwith his companions Pawan and Sahil (petitioner) were joined in the investigation. Saurabh disclosed his date of birth as 11.04.2005 and Sahil as 17.12.2004. On verification, Saurabh was found to be 17 years 02 months and 08 days at the time of occurrence whereas Sahil was found to be aged 17 years 06 months and 26 days. Thus, both the accused were found to be juvenile and were, therefore, taken into protective custody. Section 120-B IPC was added in the case.

Saurabh got recovered his mobile phone, clothes worn by him at the time of occurrence alongwith a motorcycle bearing No.HR-26-AY-6088. The petitioner and Saurabh were both produced before the Juvenile Justice Board and were sent to the Child Observation Home, Faridabad.

Accused-Pawan was arrested on 14.07.2022 and Section 109 IPC was added. He got recovered a mobile phone which was used in the conspiracy.

The call details of mobile phone No. 8826309319 of juvenile Saurabh, call details of mobile phone No.8448112021 of Pawan and call

CRM-M-35965-2023 (O & M)  
(222)

::3::

details of mobile No.7056336671 of deceased-Sumit were obtained and analyzed and it was found that Pawan and Saurabh had been in communication between 11.07.2022 to 13.07.2022.

The Challan against the juvenile Saurabh and Sahil was presented in the Court of the Principal Magistrate (Juvenile Justice Board), Gurugram on 16.10.2022. However, they were later directed by the Board to be tried as adults and the matter was sent to the Children Court, Gurugram where charges were framed against them under Sections 302, 109, 120-B IPC.

3. The learned counsel for the petitioner contends that the petitioner is not named in the FIR. There are two specific pieces of evidence inculcating him. The first is the CCTV footage of the afternoon of 12.07.2022 in which the petitioner and the Saurabh/co-accused are seen riding on a motorcycle alongwith the deceased. The second piece of evidence is the purported evidence of last seen and extra judicial confession evident from the statement under Section 161 Cr.P.C. of Chirag son of Uday Singh who stated that he had seen the deceased in the company of the Saurabh both of whom had gone away on one Ankur's motorcycle. Subsequently, Saurabh had disclosed to Ankur that he and another boy from his village, namely, Sahil had committed the murder of Sumit. He contends that so far as the evidence of CCTV footage is concerned, the petitioner is not clearly visible in the same. However, taking it to be correct, the footage was of the afternoon of 12.07.2022 and the body was discovered the next afternoon on 13.07.2022 and therefore, the last seen evidence available through the CCTV footage was insufficient to affix liability upon the accused including the petitioner as there was a gap of approximately 24

CRM-M-35965-2023 (O & M)  
(222)

::4::

hours between the time when the petitioner was seen in the company of the deceased and the time of the discovery of the body.

As regards the evidence of last seen emanating from the statement under Section 161 Cr.P.C. of Chirag, the name of the petitioner did not find mention and it is only Saurabh who was seen in the company of the deceased. So far as the evidence of extra judicial confession on the phone is concerned, it having been made by a co-accused Saurabh inculcating the petitioner, would have no evidentiary value qua the petitioner and even otherwise the evidence of an Extra Judicial Confession has little evidentiary value qua the maker itself.

The learned counsel, therefore, contends that as the petitioner was a juvenile of the age of 17 years 06 months and 26 days, was in custody since 14.07.2022 and none of the 37 prosecution witnesses had been examined so far, he was entitled to the concession of bail.

4. The learned counsel for the State, on the other hand, contends that the petitioner alongwith Pawan and Saurabh committed the murder of the deceased. There was evidence of last seen and extra judicial confession which was sufficient to affix liability upon the petitioner and his co-accused and, therefore, he was not entitled to the concession of bail. He, however, concedes that the petitioner is of the age of 17 years 06 months and 26 days, a first-time offender, in custody since 14.07.2022 and none of the 37 prosecution witnesses had been examined so far.

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 Trial.

Admittedly, the petitioner is a first-time offender, in custody since

CRM-M-35965-2023 (O & M)  
(222)

::5::

14.07.2022 and none of the 37 prosecution witnesses have been examined so far. Therefore, the trial of the present case is not likely to be concluded anytime soon. Hence, the further incarceration of the petitioner is not required.

7. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Sahil Kumar 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 case(s) referred to hereinabove.

9. 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.

10. In addition, the petitioner (or someone else 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 the absence of the petitioner from Trial without sufficient cause.

**( JASJIT SINGH BEDI )**  
**JUDGE**

**October 20, 2023**  
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No