IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38011-2023 (O & M)
Date of decision: 10.08.2023

Pankaj Kumar .... Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr.Namit Khurana, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

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JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.677 dated 10.08.2020 under Sections 302, 201, 34 IPC registered at Police Station City Jagadhri, District Yamuna Nagar.

2. The present FIR came to be registered at the instance of Rekha Rani, who stated that her son Vaibhav Kumar who was a photographer had left the house on 09.08.2020 after taking his camera. He had gone by stating that he would return within two hours. His motor cycle number was HR02AF-3153 make Platina and his mobile number was 9729443952. When he did not return by 4.00 p.m., she made a call on his mobile number and found that his phone was switch of.

Based on the aforementioned statement, on 10.08.2020, the aforementioned FIR came to be registered under Section 346 IPC.

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Thereafter, the body of Vaibhav Kumar (deceased) was found on 11.08.2020 and the offence under Section 302 IPC was added. As per the post-mortem report, three sharp injuries were found on the body and the cause of death was stated to be the injury no.1.

The statement of Baldev Singh son of Jyoti Prasad, grandfather of the deceased was recorded to the effect that on 09.08.2020, his grand son received a call, pursuant to which, he left home. His own inquiry revealed that Sonu Saini (since granted the concession of bail vide order dated 24.01.2023 passed in CRM-M-43444-2022) had called up his grand-son stating that he (Sonu Saini) wanted the deceased to make a movie of a song because of which his grand-son had been called to Industrial Area, Manakpur. Based on the said statement, Sonu Saini was nominated as an accused.

Thereafter, Pankaj Kumar and Nishu were nominated as accused and all the three accused joined investigation and were arrested. They suffered their respective disclosure statements. As per the disclosure statement, they committed the offence and snatched the Videography Camera of the deceased.

On 15.08.2020 Nishu got recovered a *Parna (towel)* purportedly used for strangulation. The co-accused Pankaj Kumar @ Amit (petitioner) got recovered a handkerchief which was used in the commission of offence. The co-accused Sonu Saini is stated to have got recovered a cutter wrapped in a handkerchief from his residential house which was taken into police possession. Thereafter, the accused-Pankaj @ Amit got recovered a bag of black colour containing a camera make CANON along with lens, mike, lead, battery charger etc. The said articles were duly

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identified by one Shubham/PW-12 who is stated to have loaned the same to Vaibhav (deceased).

The CDRs pertaining to the mobile phones were taken into possession.

3. The learned counsel for the petitioner contends that the primary evidence available against the petitioner is the purported recovery of a camera belonging to the deceased from the petitioner. Though the recovery memo shows that the said recovery was effected from the petitioner on 16.08.2020, however, a perusal of the deposition of PW-12/Shubham would show that the camera was, in fact, shown to the said Shubham on 13.08.2020 as it is he who had loaned the same to the deceased. He contends that this discrepancy is fatal to the case of the prosecution. Other than the said recovery, there was no evidence available against the petitioner. As the petitioner was in custody since 13.08.2020 and only 09 of the 30 prosecution witnesses had been examined so far, he was entitled to the concession of bail, moreso, when two co-accused, namely, Sonu Saini and Nishu had been granted the similar concession by this Court vide orders dated 24.01.2023 passed in CRM-M-43444-2022 and 23.03.2023 passed in CRM-M-13860-2023 respectively.

4. The learned counsel for the State, on the other hand, contends that the petitioner is one of the main accused. As per the prosecution case, the petitioner alongwith his co-accused murdered the deceased and the camera in the possession of the deceased was recovered from the petitioner. He contends that the discrepancy that has been pointed out cannot be appreciated at this stage as it would a matter of adjudication during the course of trial. The co-accused who had been granted the concession of bail

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were not similarly situated to the petitioner. He, therefore, contends that the petitioner was not entitled to the grant of bail.

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

6. The primary ground raised by the petitioner is that the camera which had been handed over by Shubham/PW-12 to the deceased and had been shown to have been recovered from the petitioner on 16.08.2020 had, in fact, been in the possession of the police on 13.08.2020, and therefore, the prosecution case against the petitioner was baseless and he was entitled to the concession of bail. It may be relevant to mention here that as per the case of the prosecution, the camera of the deceased was recovered from the petitioner on 16.08.2020 on which date the supplementary statement of Shubham was also recorded regarding the recovery. The discrepancy pointed out in the deposition of the PW-12/Shubham, as per which the camera had been shown to him (PW-12/Shubham) on 13.08.2020 cannot be appreciated at this stage. In fact, when Shubham/PW-12 was initially examined on 01.06.2023, his examination-in-chief had been deferred on account of his emotional state as he had started weeping while narrating the sequence of events. It was later on 01.07.2023 that he turned hostile and his version changed to the camera being shown to him on 13.08.2020 as against the initial prosecution version of the camera being recovered from the petitioner on 16.08.2020. The effect of the statement of this hostile PW-12/Shubham cannot be examined at this stage. Therefore, the petitioner is not entitled to the grant of bail.

7. In view of the above, I find no merit in the present petition and the same stands dismissed.

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8. It is made clear that nothing stated hereinabove is an expression on the merits of the case and the Trial Court is free to adjudicate upon the case based on the evidence led before it uninfluenced by any observations made hereinabove.

9. However, keeping in view the fact that the petitioner is in custody since 13.08.2020, the Trial Court is directed to conclude the trial as expeditiously as possible but, in any case, not later than 06 months from the next date fixed before it.

(JASJIT SINGH BEDI)
JUDGE

August 10, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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