

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-43444-2022 (O & M)****Date of decision: 24.01.2023**

Sonu Saini

.... 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.

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.

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 the petitioner had called up his grand-son stating that he (petitioner) 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, the petitioner 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 accused Pankaj Kumar @ Amit got recovered a handkerchief which was used in the commission of offence. The petitioner 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 identified by one Shubham 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 deceased went missing on 09.08.2020. The FIR was registered on

10.08.2020. The grand-father of the deceased made a statement on suspicion on 12.08.2020 that the petitioner had made a phone call to the deceased on 09.08.2020 asking him to come to Industrial Area, Manakpur in order to make a movie of a song. He contends that merely because the tower location of the petitioner and the deceased was same and there was evidence that the petitioner had called up the deceased was not enough to inculcate the petitioner. So far as the recovery of the cutter is concerned, he contends that the same is stated to have been used by a co-accused but shown to be recovered from the petitioner. Even otherwise, as per the FSL report, no blood could be detected on the said cutter. It is, thus, his contention that since the petition is in custody since 13.08.2020, only 03 of the 30 prosecution witnesses had been examined so far, the Trial of the present case was not likely to be concluded anytime soon. Therefore, the petitioner ought to be granted the concession of bail, moreso, when he is a first-time offender.

4. The learned counsel for the State has placed on record the reply dated 18.01.2023. He contends that the case is based on circumstantial evidence. The petitioner alongwith his co-accused called up the deceased and thereafter in order to steal his camera committed the offence in question. There was evidence to suggest that all the accused were present alongwith the deceased at the same place i.e. place of occurrence which shows that the occurrence has taken place as set-up by the prosecution. Therefore, the petitioner did not deserve the concession of bail. He, however, admits the period of custody undergone by the petitioner as also the fact that 03 of the 30 prosecution witnesses have been examined so far and that the petitioner is a first-time offender.

6. Admittedly, the case is based on circumstantial evidence. The evaluation of the evidence available with the prosecution shall be adjudicated upon during the course of the Trial. At this stage, the petitioner is in custody since 13.08.2020. Only 03 out of the 30 prosecution witnesses have been examined so far. He is a first-time offender. As such, the further incarceration of the petitioner is not required.
7. In view of the above, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Sonu Saini, 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 present one.
- 9 In addition, the petitioner (or someone 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.
10. 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.

(JASJIT SINGH BEDI)
JUDGE

January 24, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No