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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-46334-2023 (O&M)

Date of decision: October 19, 2023

Rohit @ Raj

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sachin Sharma, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

This is the second foray of petitioner seeking his release as an undertrial in a case FIR No.65 dated January 30, 2020, registered under Sections 201, 364, 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'), at the Palla, Police Station, in Faridabad. First petition was dismissed as withdrawn vide order dated December 14, 2022 (Annexure P-3) passed in CRM-M-31913-2022 by a co-ordinate Bench of this Court.

2. According to the prosecution's account, Deepak, the son of the complainant, Jawala Singh, went missing on January 27, 2020, during the afternoon. The complainant submitted a CCTV footage to the police in which Deepak was last seen with one Raj, also known as Rohit (the petitioner), in the market, and a pen drive was taken into possession. The complainant submitted another complaint on March 16, 2020, stating that the petitioner had taken away his son in his vehicle on the said date, and thereafter, his phone was found switched off. On March 24, 2020, Arvind Sahni handed over a pen drive to the police containing a recording in which the petitioner had made an extrajudicial confession before him, admitting to having committed the murder of Deepak after taking him along with him in his Scorpio vehicle. Vandana, Deepak's sister, also told the police that she had seen Deepak going away with the petitioner in his Scorpio vehicle. The call details record of Deepak was obtained, revealing a quarrel between Deepak and his friends, including the petitioner, Kunal, and Joni, while consuming liquor on January 27, 2020. Kunal and Joni were

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associated during the investigation, and based on the extrajudicial confession made by the petitioner before Arvind Sahni, which was recorded by him, offenses under Sections 364, 302, and 201 of the IPC were found to have been committed, and a formal FIR was registered.

2.1. On March 24, 2020, the petitioner was arrested and made a disclosure statement, admitting that he had murdered Deepak along with his brother Yatish by strangulating him, and they had thrown his dead body into the Yamuna river after placing it in a plastic bag in the area of village Dayanatpur, near Jewar (UP). Co-accused Yatish and Joni were also arrested, and Yatish made a disclosure statement, stating that he had held the deceased while the petitioner strangled him with a piece of cloth, and then they disposed of the dead body in the Yamuna river. During the investigation, it was discovered that the dead body of an unknown person was found by UP police on January 28, 2020, and an FIR (No. 50/2020) was registered at the Police Station in Jewar, District Bulandshahar, UP, under Sections 302 and 201 of the IPC. The police took photographs of the dead body and conducted a postmortem examination. The complainant identified the dead body as that of his son from the photographs taken by the police. Documents were collected, and statements of witnesses were recorded. After completing the investigation, the challan has been presented in court.

3. Firstly, the learned counsel for the petitioner argues that the co-accused, Johny alias Sachin, and Yatish were granted bail on July 28, 2020, and April 05, 2022 (Annexures P-6 and P-7, respectively) by the lower court.

3.1. The learned counsel also refers to the testimony of the complainant, Jawala Singh (PW-12), contained in Annexure P-4, to the effect that the complainant did not support the prosecution regarding the role attributed to the petitioner. He further asserts that based on this testimony, it is likely that the trial will result in the petitioner's acquittal, claiming that the petitioner has been wrongly accused in this case.

3.2. The learned counsel also contends that neither the petitioner was named in the FIR, nor was any specific role attributed to him. The petitioner has been implicated based on the custodial disclosure statement of a co-accused, Jaivir, and this custodial confession, taken

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in custody, is per se not admissible as evidence, particularly in view of the lack of support from an eyewitness for the prosecution's case.

3.3. Learned counsel appearing for the petitioner relies on the Apex Court's judgment in the case titled **Hasanujjaman and others Vs. The State of West Bengal**¹ to contend that, apart from the merits, merely on the ground of the duration of custody, the petitioner is entitled to bail. He further relies on the Apex Court's judgment in the case titled **Sanjay Chandra versus CBI**² to contend that imprisonment before conviction has a substantial punitive content.

3.4. Finally, he contends that nothing needs to be recovered from the petitioner, and he is not required for further custodial interrogation. There is no likelihood of the petitioner tampering with evidence or influencing prosecution witnesses, and the petitioner is not involved in any other case.

4. On the contrary, learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. Also argues that the petitioner has committed a serious offense. On a Court query, he does not controvert the grant of bail to the co-accused and complainant having not supported the prosecution version *qua* role attributed to the petitioner, as aforesaid. He admits that petitioner is not involved in any other case.

5. I have heard the rival arguments and reviewed the case file.

6. In response to a query from the Court, under instructions from ASI Vikram Singh, learned State counsel informs that the challan has already been filed, and charges were framed on November 02, 2020. Thus, the investigation regarding the petitioner is complete, and he is not required for custodial interrogation.

7. At this stage, the allegations against the petitioner are subject to trial. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Of thirty nine witnesses, seventeen have already been examined so far. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since March 24, 2020, for more than 03 years and 06 months.

¹ SLP (Crl.) No.3221-2023 decided on 04.05.2023

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8. The petitioner’s continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. There is no probability of tampering with evidence as it has already been seized by the investigating agency.
9. Co-accused of the petitioner have already been granted bail, as aforesaid.
10. The petitioner is stated to be a 53-year-old married person having one daughter to look after, and he is the sole bread earner of the family. Being family man and having a fixed abode and clean antecedents, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.
11. Considering the overall scenario, 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 by keeping the petitioner in further preventive custody.
12. Accordingly, the petitioner is ordered to be released on bail upon furnishing bail bonds and surety bonds to the satisfaction of the learned trial Court, where his case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.
13. In case the petitioner is found involved or gets involved in any offense while on bail, the prosecution shall be at liberty to seek the cancellation of his bail in the instant case.
14. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.
15. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 19, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No