

CRM-M-47159-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-47159-2022

Date of decision : 10.10.2023

PUSHPENDER

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Abhimanyu Singh, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

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.281 dated 25.09.2021 registered under Section 346 IPC, 1860 (Sections 302, 201, 120-B, 34 IPC added later on and Section 346 IPC deleted) at Police Station IMT Sector 7, Manesar, District Gurugram, Haryana.

2. The brief facts of the case are that the statement of one Jitender was recorded to the effect that he was a Transporter and his brother-in-law Rohtash (deceased) son of Shri Narayan Singh was the driver of his (complainant's) Pickup truck bearing Registration No.HR55AK6318. On 23.09.2021, Rohtash had gone to IMT Manesar Sector 3 after unloading the vehicle in Sector 58. But thereafter, he did not return home and was missing along with the vehicle.

On the aforementioned complaint, the instant FIR came to be registered under Section 346 of the IPC and the investigation began.

During the course of investigation, on 29.09.2021, the supplementary statement of the complainant-Jitender was recorded wherein he alleged that Vineet son of Jagdish, Pushpender (petitioner) and co-accused Johny had kidnapped his brother-in-law. On this, supplementary statement Section 346 IPC was deleted and the offences punishable under Sections 364, 120-B, 34 of the IPC were added.

Thereafter, co-accused Johny and Vineet were arrested on 05.10.2021 and offences punishable under Sections 302, 201 of the IPC were added in the case on the basis of the facts that had been brought on record by the arrested accused.

The petitioner was arrested on 22.11.2021. During interrogation, he suffered his disclosure statement admitting to his involvement in the present case along with his co-accused. He disclosed having committed the murder of Rohtash and thereafter having transported the dead body and having dumped the same in the Hazara Canal. Despite efforts, the body of the deceased-Rohtash could not be recovered.

In pursuance to the disclosure statement of the petitioner, he got demarcated the place of occurrence and also the CNG Pump from where the vehicle used in the commission of the offence was got refueled. He also got recovered a motorcycle bearing Registration No.UP-12-BA-0979 which had been used by him (petitioner) in the commission of the offence.

3. The learned counsel for the petitioner contends that the case is based on circumstantial evidence. There is no eye witness of the alleged crime. The dead body had not been recovered till date. The statement under Section 164 Cr.P.C. of one Shekhar @ Mulla was recorded in which he had stated that he along with the other accused had gone to a hotel for dinner. At the dinner, a phone call had been received by co-accused Vineet. In furtherance of that phone call, he (Shekhar @ Mulla) along with the other accused had reached the spot of the fight where they had seen Vineet holding someone by the neck whereas Johnny and Pushpiner (petitioner) had joined Vineet in beating that person. All of them had taken that person towards one Pickup vehicle while they kept beating him (deceased). This statement did not name the alleged deceased-Rohtash and could not be treated to be admissible evidence as this witness seem was an accused.

4. On the other hand, the learned State counsel while referring to the reply dated 26.09.2023 filed by way of an affidavit of Mr. Surender Sheoran, HPS, Assistant Commissioner of Police, Manesar, Gurugram. He contends that the statement of Shekhar @ Mulla was recorded as PW-5 wherein he has categorically stated that he had seen all the accused persons beating another person after which they had put him in the cabin of a white Pickup vehicle. Upon seeing the same, he had run away from the spot. He contends that investigation has revealed that it was the deceased who had been put in the Pickup vehicle after being beaten up by the accused including the petitioner. In addition,

there was CCTV footage available of the CNG Station which clearly showed the vehicle with the deceased and the accused inside it. Merely because the dead body could not be recovered could not be a ground to grant bail to the petitioner as it was for the accused to explain where they had left the deceased after having beaten and abducting him. Quite to the contrary, the respective disclosure statements of the accused were recorded wherein they admitted that after being beaten up, the deceased had been thrown into the Hazara Canal. Looking at the nature of allegations levelled against the petitioner and his co-accused along with the fact that 09 out of the 23 prosecution witnesses already stood examined, the petitioner was not entitled to the concession of bail.

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

6. The allegations levelled against the petitioner and his co-accused are indeed grave. Not only were they seen beating up the deceased mercilessly but they were all seen putting him in a Pickup truck after which his whereabouts were unknown. During the course of investigation, the accused suffered their disclosure statements wherein they admitted that they had dumped the dead body of the deceased in the Hazara Canal because of which the said body could not be recovered. There is corroborative evidence in the nature of a CCTV footage showing that Rohtash (deceased) was in the company of the petitioner and co-accused.

7. In view of the aforementioned discussion, I find no ground to grant the concession of bail to the petitioner. Therefore, the present petition stands dismissed.

8. However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observation made.

(JASJIT SINGH BEDI)
JUDGE

10.10.2023
JITESH

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