

2023: PHHC: 157970

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

CRM-M-51518-2023
Reserved on:05.12.2023
Pronounced on: 11.12.2023

JAMSHED

. . . . Petitioner

Vs.

State of Haryana

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. R.N. Lohan, Advocate,
for the petitioner.

Mr. Sumit Jain, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 CrPC, petitioner prays for grant of regular bail in case FIR No.35 dated 22.02.2023 registered at Nagina, District Nuh under Sections 302 / 420 / 467 / 468 / 471 / 201 /419 / 120B/ 34 IPC and Section 25 (Act N: 54 of 1959) of the Arms Act, 1959.

2. (i) As per prosecution case, on 22.02.2023, information was received regarding lying of an unknown dead body underneath the high tension wire of village Bhadas Shadipur. Police party reached the spot and found dead body with blood oozing from its neck. Dead body was found with heavy knife injury in the neck. It was sent to the hospital. Two knives as well as one chisel were lying near the dead body. The spot was photographed. With the help of documents and mobile phone recovered on the search of the dead body, the family was informed, who identified the dead body to be that of Aash Mohammad. His brother Aasin got recorded his statement, as per which his brother Aash Mohammad (deceased) along with Jamshed

(petitioner) and one other person had gone on a motorcycle from the village on 22.02.2023 and petitioner had told him that some clients were expected to come and so, they were going towards Haryana side. Said Aasin further disclosed that later on, when petitioner-Jamshed was asked about his whereabouts, he told that he was present in Bara Wazidpur and thereafter, his phone was continuously found switched off. Later on, petitioner had informed that deceased had sustained some injuries due to some accident. Complainant suspected the involvement of petitioner in the murder of his brother Aash Mohammad. FIR was lodged.

(ii) During investigation, statements of witnesses were recorded. Postmortem on the dead body was got conducted. In the postmortem report, cause of death was opined to be hemorrhage and shock due to multiple injuries, which were ante-mortem in nature and the sufficient to cause death in ordinary course of nature. Call detail records of the mobile of the petitioner was obtained and it was found that on the date of occurrence and prior thereto, he was having conversation with mobile numbers 98880-66048, 95016-14479 and 95063-48967. Their identity details were obtained and these same were found to be in the name of Vishal Kumar, Devender Jeet and petitioner through Teena Kumari. It was found that all these numbers were in continuous conversation with each other. Location of all these numbers was found within the 2-3 kilometer of the place of occurrence. Vishal son of Kishore was arrested on 25.02.2023 and based on his disclosure statement, in which he admitted his involvement in the crime, accused Harsh Kumar was arrested on 25.02.2023, who also suffered disclosure statement and admitted his involvement in the crime. Both of them demarcated the place of

occurrence. Devender Jeet was arrested on 27.02.2023 and he too admitted his involvement in the crime.

(iii) Thereafter, petitioner-Jamshed @ Tundi was arrested on 06.03.2023. During interrogation, he suffered disclosure statement, as per which he is the brother-in-law (jija) of deceased. He is having mobile with sim No.9506348967, by which he and his deceased brother-in-law Aash Mohammad @ Aasu were committing cheating with the people. He had a meeting with a boy named Harsh from Punjab. By disguising his name as Raju, he (petitioner-Jamshed) called said Harsh telling that he had a gold brick, which could be shown as a sample at Nagina on 29.01.2023. Deal was struck. On 22.02.2023, he (Jamshed) and Aash Mohammad @ Aasu (deceased) went to meet the party of Punjab. He was providing the location of deceased to the Punjab party secretly. After some time, when he called on the mobile number of the Punjab party, they did not pick the call nor Aash Mohammad @ Aasu answered his call. Later on, he noticed that Aash Mohammad @ Aasu had been murdered. He disclosed about the same to his in-laws.

(iv) As Vishal and Devender Jeet were found to have destroyed their sim numbers, Section 201 IPC was added. Since petitioner-Jamshed had disguised his name as Raju to the Punjab party by hiding his identity, so Section 419 IPC was added. On completion of the investigation, challan stands presented. Charges were framed on 25.10.2023 and case is now fixed for prosecution evidence. Status report also reveals that 32 witnesses have been cited by the prosecution, but none has been examined so far.

3. (i) Contention of Id. Counsel is that petitioner has nothing to do with the murder of deceased Aash Mohammad @ Aasu. Ld. counsel contends that in fact petitioner and the deceased had gone to sell a gold brick to the Punjab party i.e. co-accused by way of cheating and that it is the co-accused, who committed the murder of Aash Mohammad @ Aasu. Petitioner was only providing the location of the Aash Mohammad @ Aasu to the co-accused, so as to handover the brick to be sold to the Punjab party i.e. the co-accused.

(ii) Ld. counsel has further drawn attention not only towards the disclosure statement of petitioner-Jamshed, in which he had disclosed the entire story, but also pointed out towards the disclosure statement of co-accused Devender Jeet (Annexure P-1), in which he admitted that when deceased was breaking the brick, he (Devender Jeet) along with Harsh gave repeated blows on the neck of the deceased with a knife. Harsh also gave blow on the neck of the deceased with knife and thereafter, they fled away. Ld. counsel contends that thus, the attribution of committing murder of Aash Mohammad @ Aasu is to co-accused Devender Jeet and Harsh.

(iii) Ld. counsel further contends that petitioner is in custody for the last about 9 months; that he is not involved in any other case; that trial may take long time to conclude and so in all these circumstances, he be allowed bail.

4. Ld. State counsel has opposed the bail petition by pointing out that petitioner was providing the location of the deceased to the co-accused, therefore, he is also involved in his murder. It is further submitted that having regard to the gravity of the offence, petitioner does not deserve to be given the benefit of bail.

5. I have considered submissions of both the sides and have appraised the record.

6. As the disclosure statement suffered by the petitioner and that of the co-accused Devender Jeet, would reveal that petitioner and his brother-in-law i.e. deceased Aash Mohammad @ Aasu had gone to cheat the co-accused belonging to Punjab by selling a fake gold brick. Petitioner was not accompanying Aash Mohammad @ Aasu at the place, where the meeting had to take place and where murder was committed. Petitioner was simply providing location of Aash Mohammad @ Aasu to the co-accused on the basis of mobile. Said factum is admitted in the disclosure statement of co-accused Devender Jeet. Said disclosure statement also reveals that it is Devender Jeet and Harsh, who committed murder of Aash Mohammad @ Aasu. Case is dependent upon the circumstantial evidence. No motive is ascribed to the petitioner. Petitioner is in custody for the last 9 months and as per the custody certificate, he has no criminal antecedents.

7. Having regard to all the facts and circumstances as noted above, but without commenting anything further on merits of the case, petition is allowed. Petitioner is admitted to regular bail on his furnishing requisite bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

11.12.2023

Vivek

(DEEPAK GUPTA)
JUDGE

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes
No