

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

(1)

CRM-M-3604-2023

DANISH @ DANISH QURESHI AND ANOTHER

...Petitioners

Versus

STATE OF HARYANA

...Respondent

(2)

CRM-M-60386-2022

Date of decision : May 26th, 2023

SALMAN

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Ms. Vasundhara Dalal Anand, Advocate
for the petitioners in **CRM-M-3604-2023**.

Mr. Manjot Singh Gujral, Advocate
for the petitioner in **CRM-60386-2022**.

Mr. Ram Kumar Singla, A.A.G., Punjab.

HARSH BUNGER, J.

This order shall dispose of two petitions bearing **CRM-M-3604-2023** titled as "**Danish @ Danish Qureshi and another Versus State of Haryana**" and **CRM-M-60386-2022** titled as "**Salman Versus State of Haryana**" as both of them have emanated from common FIR.

2. Prayer in both these petitions, filed under Section 439 of the Code of Criminal Procedure, is for grant of regular bail to the petitioners in

case FIR No.398 dated 08.06.2021, registered under Sections 346, 394,364-A, 392, 328 and 201 read with Section 34 of the Indian Penal Code (for short 'the IPC') [Sections added subsequently vide order dated 03.08.2022 (Annexure P3), framing charges], at Police Station Sadar, District Gurugram (Annexure P-1).

3. Status reports by way of an affidavit of Sh. Sanjeev Kumar, HPS, Assistant Commissioner of Police, Sadar, Gurugram, on behalf of respondent-State of Haryana, have been filed, which are already on record in both the cases.

4. Succinctly, the above-said case FIR was registered on the complaint of one Gulzar Ahmed son of Zakir Husan resident of Mandi Kalan, Post Sudhaar Vidyalaya, Police Station Sadar City, District Hazari Bang (Jharkhand), who had stated that his younger brother Gul Hasan, whose age is 28 years, called his middle brother Jaiul Haq on 05.06.2021 at around 12:18 p.m. on his mobile phone and said that he was coming to Noida. However, it was alleged that he did not reach Noida and then the complainant searched him here and there but he could not be found. His mobile number was stated to be as 96254-07051, which was shut down. Accordingly, the afore-said case FIR was registered by submitting the identity of brother of the complainant namely, Gul Hasan that he had fair colour, round face, height 5.2", age 28 years and was stated to be wearing dark colour jeans/pant and T-shirt of light blue colour.

5. As per the status report, after the registration of the afore-said FIR, the investigation was conducted and inquiries were made regarding the missing person-Gul Hasan. The footage of the nearby CCTV cameras was checked and the photograph of the missing person-Gul Hasan was published

in *Zipnet*, *newspapers* and *Doordarshan*. The CDR of mobile No.96254 07051 of Gul Hasan was obtained. However, the said mobile is stated to have been found switched off. The account statement of Account No.410700110019547 (PNB) of Gul Hasan was obtained and it was found that Rs.11,000/- had been withdrawn from the said account on 05.06.2021. As per the status report, the details of the mobile phone of Gul Hasan, having IMEI No.865395031573346 were obtained and it came forth that the SIM No.8587934433 was being operated in the said mobile phone and the same was found to be used by one Khush Mohd; whereupon, he was joined in the investigation, who told that one Danish and Salman had given the said phone to him and they had later taken it back. Danish (petitioner No.1 in **CRM-M-3604-2023**) is stated to have been arrested on 18.07.2021 and he made a disclosure statement that on 05.06.2021, Salman and Mohd. Babul (petitioner No.2 in **CRM-M-3604-2021**) brought a passenger, who was wearing a cap, from Kapasehra (Delhi) in Auto Rickshaw No. DL-1R-S-8419. Mohd. Babul administered some intoxicating substance in the cold drink to the said passenger and when he felt dizzy, they forcibly obtained his ATM PIN number and also looted his wallet, mobile phone and other belongings. Thereafter, they left him near Pragati Maidan, Ring Road, New Delhi. Sections 328, 392, 394 and 364-A read with Section 34 of the IPC were added in the present case and the police remand of petitioner No.1-Danish was obtained for eight days. During police remand, he got recovered one gas stove and Rs.1,000/-. Thereafter, Salman (petitioner in **CRM-M-60386-2022**) was arrested on 21.07.2021 and as per his disclosure statement, he got recovered RC of Auto Rickshaw No.DL-1R-S-8419 and other articles. He further disclosed that he had broken the looted mobile

phone; accordingly, Section 201 IPC was also added in the present case. He further got demarcated the place of occurrence. Mohd. Babul (petitioner No.2 in **CRM-M-3604-2021**) was arrested on 25.07.2021, who also suffered a disclosure statement and got recovered few articles. The challan against the petitioners (in both the petitions) was submitted in the Court on 21.10.2021 and charges were framed on 03.08.2022 for offences under Sections 346, 364-A, 392, 328, 201, 34 IPC.

6. Learned counsel for the petitioners have submitted that the petitioners have been falsely implicated in this case and there is an unexplained delay of almost three days in lodging of the FIR. It is further submitted that the petitioners have not been named in the FIR and they have been arrayed as accused on the statement of one Khush Mohd. son of Shah Mohd., who was traced by the Investigating Agency with the help of the alleged missing person's mobile set and call detail records. It is submitted that upon inquiry from Khush Mohd., he had informed that the said mobile handset was given to him by Salman and Danish for use and even the said mobile was not found in his possession. It is submitted that the investigation in this case is complete; even the charges have been framed on 03.08.2022 and the trial is likely to take some time to conclude; accordingly, prayer for grant of regular bail has been made.

7. The petitioners have applied for regular bail before the Court of Additional Sessions Judge, Gurugram; however, the same were wrongly dismissed vide order dated 12.01.2023 (Annexure P-3 in the case of Danish and Mohd. Babul in **CRM-M-3604-2023**) and vide order dated 21.11.2022 (Annexure P-2 in the case of Salman in **CRM-M-60386-2022**).

8. Per contra, learned State counsel has opposed the prayer for grant of regular bail to the petitioners on the ground of seriousness and gravity of the offence. Learned State counsel, while referring to the status report, has submitted that the petitioners, in connivance with each other, planned to rob some passenger after making him sit in his Auto Rickshaw; whereupon, they picked up a passenger (missing person Gul Hasan as per the photograph shown to the accused) in Auto Rickshaw No.DL-1R-S-8419. It is stated that they had bought cold drink, wherein they mixed some intoxicating substance and Gul Hasan was made to drink it due to which, he felt dizzy and thereafter, the petitioners gave beatings to the said person and obtained his ATM PIN card and looted his wallet, mobile and other belongings i.e. gas stove, ceiling fan etc. and left Gul Hasan near Pragati Maidan, Ring Road, New Delhi.

9. I have heard learned counsel for the parties and have perused the paper book as well as status report filed by learned State counsel, with their able assistance.

10. A perusal of the paper-book as well as status report would reveal that the FIR in question was registered regarding missing person Gul Hasan. One Khush Mohd. was traced with the help of mobile phone bearing IMEI No.865395031573346, which was being used by him and upon his disclosure statement, the names of the petitioners were reflected. Apart from the said disclosure statement of Khush Mohd. to the effect that the mobile phone was handed over to him by Danish and Salman, there are alleged disclosure statements made by the petitioners also.

11. What is the evidentiary value and admissibility of such disclosure statements of the petitioners and also Khush Mohd. against the

petitioners, would be a moot point to be decided during the course of trial by the trial Court.

12. Be that as it may, petitioner No.1-Danish (in **CRM-M-3604-2023**) was arrested on **18.07.2021**; petitioner No.2-Mohd. Babul (in **CRM-M-3604-2021**) was arrested on **25.07.2021** and petitioner-Salman (in **CRM-M-60386-2022**) was arrested on **21.07.2021**. Since then, they are in judicial custody. The Investigation in this case is already complete and even the charges have been framed. As per the status report, there are 13 witnesses, however, none of them have been examined till date. Furthermore, there is no history of the previous involvement of the petitioners in any other criminal case. The final conclusion of the trial will take some time.

13. In view of the above, both the above-said petitions are allowed and petitioners namely, Danish @ Danish Qureshi; Mohd. Babul (in **CRM-M-3604-2023**) and petitioner-Salman (in **CRM-M-60386-2022**) are ordered to be released on regular bail subject to their furnishing bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate / trial Court concerned.

14. However, before release, the concerned Station House Officer be informed and the petitioners shall inform the concerned Station House Officer about their address at which they intend to reside during the pendency of the case and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioners would furnish their telephone numbers to the concerned Station House Officer and would keep their mobile location on. Petitioners shall appear before the police station concerned on first Monday of every month till the conclusion of trial in this case and every time inform in writing that they are not

involved in any other crime other than the case(s) mentioned in the present order.

15. In addition, each of the petitioners (or anyone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- (in both the petitions) and deposit the same with the trial Court. The same would be liable to be forfeited as per law, in case of absence of the petitioners from trial without sufficient cause.

16. Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

17. Both petitions i.e. **CRM-M-3604-2021** and **CRM-M-60386-2022** are accordingly disposed of.

18. A photocopy of this order be placed on the file of another connected case.

May 26th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No