

CRM-M- 61045-2022 (O&M) --

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

**CRM-M- 61045-2022 (O&M)
Date of Decision: 19.05.2023**

Balram alias Bunt

... Petitioner

V/s.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

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Present : Mr. Mandeep Singh Sachdev, Advocate
for the petitioner.
Mr. Madhur Sharma, AAG, Punjab.

DEEPAK MANCHANDA, J.(Oral)

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CRM-22666-2023

The instant application has been filed for placing on record
the the additional documents as Annexures P-4 to P-6.

For the reasons mentioned therein, the application is allowed.

Documents as P-4 to P-6 are taken on record subject to all
just exceptions.

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Petitioner has prayed for grant of regular bail pending trial
under Section 439 Cr.P.C. in case FIR No. 186 dated 08.11.2021, under
Sections 302, 201, 34, 379 IPC registered at Police Station Sadar
Nakodar, District Jalandhar Rural (Punjab).

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The FIR in the present case has been registered on the basis of statement of Vishal Kumar,s/o Kishori Lal dated 08.11.2021 wherein it has been stated that his eldest brother Akshay Kumar alias Sonu was running a lottery stall at Mohalla Rehmanpura, Nakodar. On 02.11.2021, at about 1.00 p.m., he had gone to his shop on his black colour bullet motorcycle bearing No. PB-08-ET-5551 but did not reach there and about 4.45 p.m., said Akshay Kumar informed the complainant telephonically that he was going to village Dhaliwal to meet his friend Pawan Kumar. But Akshay Kumar neither returned home till 10.00 p.m., nor picked up the calls of the complainant. Thereafter, the complainant made a telephonic call to Pawan, who informed him that Akshay Kumar did not turn up to meet him today. A search was made by him, but to no avail. It was further stated that on 03.11.2021, at about 8.00 a.m., the complainant came to know that motor-cycle of his brother Akshay Kumar was lying parked near a closed brick-kiln on the road from Shankar to Boparai Kalan and his dead body was also lying there. The complainant along with other family members reached at the spot and found the dead body of Akshay Kumar as well as the motor cycle. On his search, the mobile phone was found switched off and the key of the motor cycle was found in his pocket, however, his gold chain, earrings and purse were missing. On making enquiry of his own, the complainant came to know that his brother Akshay Kumar alias Sonu has been murdered by Ashwani Kumar, Balram alias Bunt (The petitioner), Abhishek alias

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Abhay and Surinder Kumar alias Shinder and they threw his dead body at the brick-kiln.

Learned counsel for the petitioner contends that Akshay Kumar (deceased) as well as petitioner and Ashwani Kumar were drug addicts and it is a case of overdose of drugs, and as per the prosecution story the Akshay Kumar (deceased), Ashwani Kumar and present petitioner were playing gambling, where due to scuffle amongst them, the petitioner caught hold of the arm of deceased and co-accused Ashwani Kumar injected drugs in left arm of deceased ,resultantly who died at the spot. Thereafter , the dead body of the deceased was thrown by the petitioner with the help of co-accused and petitioner parked the bullet motorcycle of deceased near his body.

Learned counsel for the petitioner also contends that present petitioner has been nominated in the present case on the basis of his own disclosure statement dated 3.11.2021 whereas as per reply filed by the respondent-State, the petitioner was arrested on 10.11.2021 which is doubtful and proves that the petitioner was forced to make said disclosure.

Learned counsel submits that as per the alleged FIR, the murder took place on the intervening night of 02.11.2021/03.11.2021 where the complainant on 03.11.2021 itself got recorded the statement and despite being there a death under suspicious circumstances only proceedings under Section 174 Cr.P.C. were initiated, whereas during the intervening period from 03.11.2021 and 08.11.2021 last rites of

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deceased were performed by the family and the entire evidence was destroyed as there was no requirement for the police to take any legal action. It is only after the gap of 5 days, the story was cooked up by the complainant and

an FIR was registered on 08.11.2021 after the self investigation of the complainant.

It is further submitted that nothing has been recovered from the petitioner and as per Annexure P-5,(Rapat U/s 174) it is mentioned that a little blood near the mouth of the deceased was spotted and as per the PMR in Column i.e. External General Appearance "*Frothy bleeding from mouth present*" has been mentioned ,which shows that deceased was died due to overdose and no such injury/marks have been mentioned in the post-mortem report showing that the deceased was injected with the intoxicated injections.

It is again submitted that co-accused namely Abhishek @ Abhay who is at par with the present petitioner has already been granted regular bail in CRM-M-28046 of 2022 vide order dated 08.07.2022. Learned counsel for the petitioner also argued that the post-mortem of deceased was conducted on 16.12.2021 and the Viscera report was sent for forensic examination vide Road No. 6 dated 28.01.2022 which is still awaited till date and, the challan has already been presented and no case is pending against the petitioner ,where out of total 19 witnesses only 01 witness has been examined. Therefore, petitioner be also enlarged on bail.

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Learned State Counsel on instruction from ASI Sukhwinder Pal Singh, has opposed the bail application on the ground that the petitioner caught hold of deceased's arm, made an attempt in helping to dispose of the dead body and to destroy the evidence, hence, does not deserve any concession of bail but has not disputed that the co-accused Abhishek@ Abhay who has already been granted concession of bail by this Court vide order dated 08.07.2022. No other case is pending against him, challan stands presented, where charges have been framed on 21.04.2023 and out of total 19 prosecution witnesses only one has been examined.

Petitioner is in incarceration since 15.11.2021.

I, have heard learned counsel for the parties. This is not in dispute that co-accused namely Abhishek@Abhay who has already been granted concession of bail by this Court vide order dated 08.07.2022, is at par with the petitioner. It is also admitted in the reply the viscera report/FSL report which was sent on 28.01.2022 is still awaited and as per MLR no such injury of injection as alleged against the petitioner is mentioned therein and the challan has already been presented and no case is pending against the petitioner, where out of total 19 witnesses only 01 witness has been examined. The trial would take sufficient time, so no useful purpose would be served in keeping the petitioner behind bars.

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Resultantly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court concerned on the following conditions:-

- 1. *he shall appear before the Court on each and every date of hearing;*
- 2. *he shall not give any threat or intimidation to the prosecution witnesses;*
- 3. *he shall not indulge in any criminal activity.*

The Court accepting bonds would ensure that two local sureties who are financially sound having immovable properties within jurisdiction of the district furnish the bonds.

In addition to that the trial Court may impose any term and condition found suitable to ensure that the petitioner does not abscond and interfere in the trial.

In case the petitioner violates any terms and conditions on which the bail has been granted to him, the prosecution would be entitled to apply for cancellation of his bail.

The petition is allowed accordingly.

(DEEPAK MANCHANDA)

JUDGE

19.05.2023

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Whether speaking/reasoned	Yes
Whether Reportable	Yes /No