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

CRM-M-60388-2022 (O&M)

Date of decision : 10.04.2023

Israar Ali @ Bhura

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sahil Chaudhary, Advocate for the petitioner.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. Raj Sumer Singh, Advocate and
Mr. Amit Gupta, Advocate for the complainant.

VIKAS BAHL, J. (ORAL)

This is a second petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.8 dated 09.01.2021 registered under Section 346 of Indian Penal Code, 1860 (Sections 302, 364, 120-B, 201, 34 of IPC have been added later on) at Police Station Gandhi Nagar, District Yamuna Nagar.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 21.02.2021 and there are 39 prosecution witnesses, out of which, only 9 witnesses have been examined as yet and thus, the conclusion of trial is likely to take time. It is further submitted that the first bail application filed by the petitioner was withdrawn on 12.12.2022

with liberty to file a fresh petition after annexing all the relevant documents. It is contended that thus, in effect, the present petition is the first regular bail application of the petitioner. It is further contended that FIR, in the present case, was registered on 09.01.2021 by the complainant-Ashraf on the basis of allegations that his brother Azim had gone out of his house on 07.01.2021 and after that, he was not traceable and thus, FIR was registered under Section 346 of IPC. Learned counsel for the petitioner has highlighted the fact that the complainant had got recorded the particulars of appearance of the deceased while getting the FIR registered in order to facilitate his search and it was mentioned that the deceased was 5 feet 6 inches tall and was wearing blue jeans, red jersey and black shoes. It is contended that the dead body was recovered from a canal on 08.02.2021 and the said dead body cannot be stated to be the dead body of the deceased-Azim inasmuch as, as per the postmortem report, height of the said dead body was stated to be 68 inches i.e. 5 feet 8 inches, whereas the height mentioned in the FIR was 5 feet 6 inches. It is further contended that a further perusal of the postmortem report would show that there was no ligature mark on the dead body whereas it is the case of the prosecution, as stated by Sharafat Ali in his disclosure statement, that a muffler was put around the neck of the deceased and the deceased was strangled/choked by the accused persons. It is argued that a perusal of the postmortem report would show that even the clothes which were on the dead body i.e., black & white striped shirt, white vest/banyan, grey pants, were different from the clothes as were stated to be worn by Azim as per the FIR. Learned counsel for the petitioner has further pointed out that in order to identify the body, DNA profiling was done and for the said

purpose, a piece of the little finger of right hand of the deceased was compared with the DNA profile of the mother of Azim and it was found that the said two samples were not comparable. It is further argued that in the present case, although, offence under Section 302 of IPC has been added but it has not even been established that the dead body which was recovered from the canal was of the deceased-Azim. It is also submitted that the petitioner was neither named in the FIR nor in the supplementary statement of the complainant which was recorded on 19.02.2021 and was named only in the disclosure statement of co-accused Sharafat Ali who was arrested on 21.02.2021 in pursuance of the supplementary statement made by the complainant on 19.02.2021, in which, he had raised suspicion qua Asha Rani and Sharafat Ali for having committed the murder of his brother. It is also contended that the petitioner is not involved in any other case and thus, prays for grant of regular bail to the petitioner on the ground of period of custody and additionally, on the basis of the fact that it is not even established that the dead body which had been recovered was of Azim and also that no suspicion has been raised by the complainant against the present petitioner neither in the FIR, nor in the supplementary statement dated 19.02.2021. It is also submitted that the co-accused of the petitioner namely, Adil, has been granted the concession of regular bail by this Court vide order dated 14.02.2023 passed in CRM-M-6123-2022 and the case of the present petitioner is on a similar footing as that of said Adil. It is also contended that Aasha Rani, who is also one of the co-accused of the petitioner, has also been granted the concession of regular bail by a Coordinate Bench of this Court vide order dated 29.03.2023 passed in CRM-M-55586-2022.

On the other hand, learned State Counsel, on instructions from SI Surjan Singh, alongwith learned counsel for the complainant, have opposed the present petition for grant of regular bail to the petitioner and have submitted that in the present case, there are four accused persons, all of whom are cousins and in the supplementary statement dated 19.02.2021, the complainant had named Asha Rani and Sharafat Ali and on the basis of the same, Sharafat Ali was arrested and it is on the basis of disclosure statement of the said Sharafat Ali, that the petitioner, who is a cousin of said Sharafat Ali, has been arrayed as an accused. It is further submitted that the motive with respect to committing the said murder was that the deceased used to tease the niece of Sharafat Ali and thus, Sharafat Ali, along with his cousins including the petitioner, has committed the said incident in question.

Learned State Counsel as well as learned counsel for the complainant have further submitted that the complainant has identified the dead body of his brother and the present petitioner, along with other co-accused, had identified the place where Azim was killed and also identified the place where the dead body of Azim and his motorcycle were thrown. It is further submitted that even the present petitioner was sitting with Sharafat Ali in the car, which Sharafat Ali had taken from Anuj Sharma, who is the owner of the car and after having committed the offence, had returned the same to Anuj Sharma.

This Court has heard learned counsel for the parties and has perused the paper book.

In the present case, the petitioner is in custody since 21.02.2021 and out of 39 prosecution witnesses, only 9 witnesses have been examined

and thus, the conclusion of trial is likely to take time. The petitioner is stated to be not involved in any other case. The first bail application filed by the petitioner was withdrawn on 12.12.2022 with liberty to file a fresh petition after annexing all the relevant documents and thus, in effect, the present petition is the first regular bail application. Learned counsel for the petitioner has raised arguments so as to cast a doubt with respect to the aspect as to whether the dead body which has been recovered is of deceased-Azim or not. In the FIR, height of the deceased is stated to be 5 feet 6 inches whereas in the postmortem report, height of the dead body which has been recovered is stated to be 68 inches (5 feet 8 inch). In the postmortem report, it has been stated that there was no ligature mark on the body of the deceased, whereas it is the case of the prosecution, which is apparent from the disclosure statement of Sharafat Ali, that a muffler was wrapped around the neck of the deceased and he was choked and strangulated before he was thrown into the canal. A perusal of the DNA profiling report dated 31.08.2021 (Annexure P-5) would also show that it has been stated that the "Autosomal STR analysis indicates non specific multiple allelic DNA profile in item No.1" (piece of right little finger of the deceased) "which is not comparable with the DNA profile obtained from item No.2" (blood sample of the mother of Azim). The question as to whether the recovered body is of Azim or not, would be finally adjudicated during the course of the trial but the same raises an arguable point in favour of the petitioner in the present case. Moreover, initially, the FIR was registered under Section 346 of IPC on 09.01.2021 and the petitioner was not named in the same. The complainant got his supplementary statement recorded on 19.02.2021 and even in the said statement, the present

petitioner had not been named and thus, the complainant, at no stage, has specifically raised suspicion against the present petitioner. Co-accused of the petitioner namely, Adil, has been granted the concession of regular bail by this Court vide order dated 14.02.2023 passed in CRM-M-6123-2022 and the case of the present petitioner is on a similar footing as that of said Adil. Aasha Rani, who is also one of the co-accused of the petitioner, has been granted the concession of regular bail by a Coordinate Bench of this Court vide order dated 29.03.2023 passed in CRM-M-55586-2022.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

10.04.2023*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**