

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

CRM-M-20271-2023
Reserved on: 11.01.2024
Pronounced on: 18.01.2024
2024: PHHC: 006214

ARSHAD

. . . . Petitioner

Vs.

State of Haryana

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Ram Singh Chaudhary and Mr. Anil Kumar, Advocates,
for the petitioner.

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

Ms. Sunita Gupta and Mr. Vipul Aggarwal, Advocates,
for the complainant.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 CrPC, petitioner prays for his release on regular bail in case FIR No.399 dated 23.09.2022 registered under Section 302 IPC at Police Station Sadar Tauru, District Nuh.

2.1 FIR was lodged on the complaint of Hasan Khan, father of the deceased Asin. It was alleged that his son Asin aged 35 years was a driver by profession and was working in Shyam Ventures Pvt. Ltd. Mumbai on their truck No. NL-01-AF-0841. On 17.09.2022, his son loaded the vehicle from Mumbai for Ghaziabad (UP). Accused Arshad (petitioner) was driver on another truck, which was also loaded from Mumbai for Faridabad. Both the vehicles were coming together side-by-side. On 21.09.2022 at about 12 O'clock in the night, his son parked the vehicle near Dhulawat at KMP

Highway. Arshad also parked his vehicle and thereafter, said Arshad left with his vehicle for unloading at Faridabad. However, the vehicle of Asin kept lying parked on KMP Highway and his son was found missing. His phone was found switched off. Missing report was initially lodged. On 24.09.2022, on getting information about finding of a dead body of unknown person lying on KMP Highway, police party reached there. Dead body of Asin was found. Complainant identified the dead body to be of his son. He expressed his strong suspicion that his son Asin had been murdered by accused Arshad (petitioner herein), who had thrown the dead body in the drain at village Padhani near KMP bridge.

2.2 Statements of witnesses were recorded. Cause of death was initially kept preserved till the receipt of the report of viscera. Petitioner was arrested on 25.09.2022. It was found during the course of investigation that deceased Asin was having illicit relations with the wife of the petitioner, due to which the petitioner had pushed the deceased from the flyover with an intention to kill him. During further investigation, CDRs of the mobiles of the deceased as well as the petitioner were collected. Their location was found to be on the same place. GPS location of trucks of both of them was also collected. After completion of investigation, final report under Section 173 CrPC was prepared.

3.1 It is contended by ld. counsel that petitioner has been falsely implicated; that case is dependent upon the circumstantial evidence; that there is no last seen evidence; that there is no motive and that petitioner has been implicated merely on assumption and presumption. Ld. counsel for the petitioner has also drawn attention of this Court towards rough site plan

(Annexure R11), wherein point (a) is shown to be the spot from where the petitioner had pushed the deceased at the culvert of KMP Highway. Point (b) is shown, where the deceased was stated to have fallen on account of push, whereas point (c) is shown from where the dead body of Asin was found. Ld. counsel contends that it is not explained by the Investigation Agency as to on whose demarcation points (a) and (b) have been shown in site plan.

3.2 Ld. counsel further pointed out that as per the viscera report, no poisonous substance was found. Attention is also drawn towards postmortem report to contend that injuries on the person of the deceased were simple.

3.3. Ld. counsel also referred to decisions of Hon'ble Supreme Court rendered in *John Anthonisamy @ John Vs. State By the Inspector of Police Pollachi Town, 2022(4) RCR (Criminal) 948* and *Dinesh Kumar Vs. The State of Haryana, 2023(3) RCR (Criminal) 1*, in order to contend that evidence of last seen becomes extremely important piece of evidence in case of circumstantial evidence, particularly when there is close proximity of time between when accused was last seen with deceased and discovery of body of deceased.

3.4. Ld. counsel contends further that investigation is already complete; that petitioner is in custody for the last more than 1 year and 3 months; that trial may take time to conclude and prayed that in all these circumstances, he be allowed bail.

4.1 Ld. State counsel has strongly opposed the bail petition by submitting that case is dependent upon circumstantial evidence. Ld. State counsel submits that it is in the company of the deceased that petitioner was

last seen on the night of 21.09.2022. As per the CDR details, location of mobile of the petitioner as well as deceased was found at the same spot. GPS location of vehicles of petitioner as well as deceased was found at the same place.

4.2 Ld. State counsel also submits that since the truck being driven by the deceased and the truck being driven by the petitioner started together from Mumbai and both of them were going together and both of them halted at KMP Highway, it is not explained by the petitioner, as to why he did not notice that truck of the deceased was not following him. Ld. State counsel further submits that material witnesses are still to be examined and so, having regard to the gravity of the offence, petitioner does not deserve to be given bail.

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

6. Case is admittedly dependent upon circumstantial evidence. Even the complainant of the case has not been examined so far. The charges against the petitioner are quite grave. The offence is serious, which entails punishment even to the death sentence.

7. Having regard to all the facts and circumstances as noted above, but without commenting anything further on merits of the case, this Court is not inclined to admit the petitioner on regular bail at least at this stage.

Dismissed.

18.01.2024
Vivek

(DEEPAK GUPTA)
JUDGE

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |