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

Sr. No.226

**CRM-M-27923-2024(O&M)
Date of decision : 05.11.2024**

Barinder Kumar @ Varinder Kumar @ Babbu

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. K.A. Singh, Advocate, for the petitioner.

Mr. R.S. Thind, DAG, Punjab.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.186 dated 26.12.2023, under Sections 304 & 201 IPC, registered at Police Station Focal Point, District Ludhiana.

2. The relevant portion of the FIR is reproduced below:-

“Statement of Satish Kumar son of late Baram Singh resident of House No.92, street number 5, Mohalla Ganesh Nagar Mundia Khurd, Dashmesh Kalan, Police Station Jamalpur, Ludhiana, aged around 42 years Mobile Number 96467- 25320 stated that I am resident of above mentioned address, I am working as a Driver in A to 2 Best Management Mundia Khurd Ludhiana. I further want to record in my statement recorded earlier 18.11.2023 that Pardeep Rai on dated son of Late Jagdish Rai R/o House Number 305, number 5, street Ganesh Nagar, Mundian Khurd, Dashmesh Kalan, Police Ludhiana, who is my Station Jamalpur brother-in-law in relationship. In the year 2011 marriage of Pardeep Rai has been solemnized with Preeti Rai D/o Gundi Lal R/o Ram Darbar Chandigarh. Who is having two daughters. Pardeep

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Rai is having domestic discord with his wife Preeti Rai as a result of which since around 5-6 months wife of Pardeep Rai along with her both daughters started living separately in her parental house resultantly Pardeep Rai started doing drugs and used to remain tense. My brother-in-law due to being upset used to roam around in the area after doing drugs. On dated 16.11.2023 time Pardeep Rai above anyone went somewhere, at around 08.00 PM named without telling so we searched him around nearby areas, but no clue of him was found. Whose dead body was found near H.P. Gas Agency Ramgarh Road Sahnewal, Ludhiana. That upon the statement recorded by me earlier through Police Station Focal Point vide report Number 26 dated 18.11.2023 proceedings were carried out under offence 174 Cr.P.C. My brother-in-law was habitual of doing drugs since past, who had quit drugs, I come to know that on dated 16.11.2023 my brother-in-law Pardeep Kuamr was taken along by his friends Sukhchain Singh alias Shanty son of Late Mohinder Singh R/o House Number 1180/6768 Near Bloosom Mundia Kalan Ludhiana and Varinder Kumar alias Babbu SO of Late Nirdosh Kumar R/o Street Number 1/2 Gurudev Colony, Jai Near Gurudev Jai Aasar Village Mundia Khud Ludhiana, that both of them were also habitual drug addicts. They lured my brother-in-law and took him along with them from home, they gave overdose of drugs to my brother in law, as a result of which death of my brother in law has taken place due to intake of drug overdose and they in order to misappropriate dead body of my brother in law Pardeep Rai had thrown it at abandoned place at Ramgarh Road Sahnewal, Ludhiana. That appropriate legal action may be initiated against Sukhchain Singh @ Shanty and Varinder Kumar @ Babbu I have recorded my statement in presence of my mother in law Krishna Devi wife of Late Jagdish Rai resident of House No.305, street number 5, Ganesh Nagar, Mundia Khurd, Dashmesh Kalan,

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Police Station Jamalpur Ludhiana, heard it is correct Sd/- Satish Kumar (English) confirmed by sd/- Krishan Devi (hindi).”

3. Learned counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in this case. He further submits that there is no *prima facie* evidence to link the petitioner with the present FIR. He also submits that the investigating agency never prepared a site plan or spot inspection report upon discovery of the deceased's body on 18.11.2012. However, the spot inspection report was prepared on 26.12.2023 and the petitioner has been arrested on 27.12.2023. There is a delay of 40 days in registration of the FIR. It has also been argued that in the preliminary statement of the complainant name of the petitioner did not surface. Earlier, the police had closed the file after initiating the proceedings under Section 174 Cr.P.C. The petitioner has undergone an actual custody of 10 months and 05 days and there is no other criminal case registered against him.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He states that the petitioner was actively involved in the commission of the offence. He has filed custody certificate in Court and as per custody certificate, the petitioner has undergone an actual custody of 10 months and 05 days, however, he submits that there is no other criminal case registered against him. He on instructions from the concerned investigating officer submits that the charges have been framed on 04.05.2024. Out of a total of 23 prosecution witnesses, 02 witnesses have been examined and 05 witnesses have been given up. He however, contends that in view of the serious allegations against the petitioner, he is not entitled to the concession of regular bail.

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5. Heard the rival submissions made by learned counsel for the parties.

6. Admittedly, the petitioner has undergone custody period of 10 months and 05 days. The investigation is complete and out of a total of 23 prosecution witnesses, 02 witnesses have been examined and 05 witnesses have been given up. The petitioner has clean antecedents. It would be unjust to keep him behind bars looking at the condition of the jails which are not conducive for rehabilitation process and detaining the accused persons in jails would also tantamounts to violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgment of Apex Court in **“Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22”**.

7. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in **“Abdul Rehman Antulay and others v. R.S. Nayak and another”, 1992(2) RCR (Criminal) 634** observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

8. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Further, considering the aspect that the trial will take a considerable time to conclude, this Court is of

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the considered view that further incarceration of the petitioner will not serve any purpose.

9. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (I) The petitioner will not tamper with the evidence during the trial.
- (II) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- (V) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

10. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

11. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would

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proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

05.11.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No