

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

225

2024:PHHC:024212

CRM-M-39779-2023

Date of decision: February 21, 2024

PAWAN KUMAR

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Munish Behl, Advocate
for the petitioner.

Ms. Trishanjali Sharma, Deputy Advocate General, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

1. The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.214 dated 03.09.2022 (Annexure P-1) under Section 302 of the Indian Penal Code, 1860 (Sections 34 and 120-B of the IPC added later on), registered at Police Station Shahzadpur, District Ambala.

2. Before proceeding further, it would be apposite to reproduce the relevant portion of the FIR in question, which has been annexed as Annexure P-1, hereinbelow: -

“Today on dated 03.09.2022, at about 5:40 PM, I was going through the ‘Pacci’ street of Ravi Dass Mandir towards my Village Bharapur, on feet, and then at a distance of about 5 feet from the street, one person was seen lying in bushes, wearing one Red T-shirt and deep blue colour trouser. Thereafter, I sided the bushes with my hands, and then I saw that one person aged about 40 years was lying there in dead condition, having substantial injury marks at the back of his head and lot of blood was oozing from the head, and whereupon, lot of flies and ants were there upon him.

Inquiry was made from the surrounding area, but his whereabouts could not be made known. I gave information in the said regard to the police, The unknown person has been murdered by unknown persons, by giving injuries on head. Strict legal action may kindly be taken against the person, who committed the murder. I have got recorded my statement to you, heard and understood and the same is correct. Sd/- Onkar Singh”

3. Learned counsel for the petitioner *inter alia* contends that the case in hand rests on circumstantial evidence and the FIR in question came to be registered on the statement of one Onkar Singh. Learned counsel has submitted that in a case resting on circumstantial evidence, motive to commit the crime is the most relevant factor; however, in the case in hand, motive had been allegedly spelt out by PW-4 Ankush Kumar (brother-in-law of the deceased-Sunil), who however, while stepping into the witness box, had not supported the case of the prosecution, as a result of which, he was declared hostile. In support, learned counsel has placed on record the deposition of PW-4 Ankush Kumar, wherein it stands revealed that this witness categorically deposed that his sister was happily married with the deceased and had been living with him along with their children. Learned counsel has submitted that as per the case set up by the prosecution, the murder in question had been committed on account of the deceased being in an illicit relationship with the wife of the petitioner and since the deceased had been ill-treating the petitioner's wife, the petitioner as well as his 16 year old son decided to eliminate the deceased by taking him to a forest area and after murdering him, throwing his body into the bushes. Learned counsel has, thus, argued that once PW-4 Ankush Kumar, who had allegedly spelt out the motive for the petitioner to commit the crime in question, had categorically deposed that his sister was leading a happy married life with the

deceased; there was no question of either the deceased being in an illicit relationship with the wife of the petitioner or having ever ill-treated the petitioner's wife. Learned counsel has further submitted that since 5 prosecution witnesses including the complainant as well as PW-4 Ankush Kumar, who allegedly spelt out the motive to commit the crime in question, had been examined, further incarceration of the petitioner would serve no useful purpose as 27 prosecution witnesses still remained to be examined.

4. Learned State counsel has filed the affidavit of the Deputy Superintendent of Police, Naraingarh, District Ambala on behalf of the respondent-State in the Court today, which is taken on record subject to just exceptions. While opposing the prayer made by the learned counsel for the petitioner, learned State counsel, on instructions, has not been able to dispute that PW-4 Ankush Kumar, who allegedly spelt out the motive to commit the crime, had been examined and had also been declared hostile during trial. She has also not disputed that 27 prosecution witnesses remain to be examined. Learned State counsel has, however, submitted that there was one CCTV footage collected by the investigating agency, wherein the deceased was seen accompanying the petitioner as well as the co-accused i.e. his son in a car, prior to the occurrence in question; from which it could be safely inferred that the petitioner along with his son had committed the murder of the deceased and thereafter, thrown his dead body in the bushes alongside the road. She has reiterated the motive on the part of the petitioner and the co-accused to commit the crime in question i.e. the alleged live-in relationship of the deceased and the wife of the petitioner.

5. I have heard learned counsel for the parties and perused the material placed on record.

6. The case in hand hinges on circumstantial evidence. The witness, who spelt out the motive, did not support the case of the prosecution during trial, as a result of which, he was declared hostile. Since the sole material witness stands examined, further incarceration of the petitioner would serve no useful purpose as the likelihood of the trial concluding in the near future looks remote in view of 27 prosecution witnesses still remaining to be examined and there can be no possibility of the petitioner influencing the remaining witnesses.
7. In the facts and circumstances as enumerated hereinabove, this Court deems it fit to extend the concession of bail to the petitioner. Accordingly, the instant petition is allowed; the petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned.
8. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

February 21, 2024
Jaspreet Kaur

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No