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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42490-2024
Date of Decision: 07.11.2024

Kuldeep and another
...Petitioners

Versus

State of Haryana
...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:- Mr. Ishnoor Singh, Advocate for
Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Anmol Malik, DAG Haryana

Mr. Sandeep Sharma, Advocate
for the complainant

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 petitioners in case FIR No.209 dated 01.06.2023 registered under Sections 302, 201, 120-B IPC (Section 346 IPC deleted) at Police Station Madhuban, District Karnal.

2. The above-mentioned FIR was got registered on the basis of complaint made by Sant Lal. The contents of the FIR are reproduced herein below:-

"Copy of application - To the chowki Incharge Manglore chowki Karnal Sir, the request is that I, Santlal Son of Nebraj, resident of Amritpur Kala, Police Station Madhuban District Kamal, My son Naresh son of Santlal, who has gone from home yesterday at 30 clock

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in the afternoon, whose age 26 years, complexion wheatish, height 5 feet 5 inches, wearing a green shirt and black pyjama, who keeps beard, who has not yet returned home, so that I request you to please help me in finding him SD LTI Santlal applicant Santial son of Nebraj mobile number 9050347689, mobile number of Naresh 9729292693 ."

3. Initially, the FIR had been registered on 01.06.2023 under Section 346 IPC. On 06.06.2023, during investigation the complainant expressed suspicion on Sandeep (petitioner in CRM-M-26716-2024) son of Yashpal, Dharampal, Kuldeep son of Dharampal and Azad (petitioner in CRM-M-27018-2024) son of Darshan Lal regarding the missing of Naresh Kumar.

On 12.06.2023, an SIT was constituted and on 14.06.2023 during investigation one Devender Rana husband of the Sarpanch produced all the four named accused including the petitioners stating that the said accused had made an extra-judicial confession to him regarding having committed the murder of the deceased by throwing him into the WJC Canal.

During the course of investigation CCTV footage was obtained and it was found that on 01.05.2023 a motorcycle bearing No.HR91B-7319 Bajaj Platina was seen on which accused Sandeep was sitting in the front and driving the motorcycle while accused Madan was sitting in the middle of the motorcycle and the deceased Naresh Kumar was sitting behind on a motorcycle.

After the body of the deceased was recovered, DNA sampling was done and the same was not conclusive regarding the identity of the dead body.

4. Learned counsels for the petitioners contend that other than the extra-judicial confession purportedly made by the accused before Devender Rana, there was no admissible evidence inculcating the accused. An extra-judicial confession

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by its very inherent character was a weak piece of evidence and no reliance could be placed on the same. There was a doubt of the identity of the body recovered from the water as that being of the deceased. There was no motive for the accused to have committed the offence in question. He further submits that it is a case of circumstantial evidence. Learned counsel for the petitioners submits that petitioner No. 1 has undergone actual custody of 01 year, 04 months and 20 days and there is one more case pending against him and petitioner No. 2 has undergone actual custody of 01 year, 04 months and 22 days and there is no other case pending against him. He further submits that similarly situated co-accused Sandeep and Azad have been granted the concession of regular bail by Co-ordinate Bench of this Court vide order of even date 13.08.2024 passed in CRM-M-26716-2024 and CRM-M-27018-2024.

5. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioners. As per the custody certificate, petitioner No. 1 has undergone actual custody of 01 year, 04 months and 20 days and there is one more case pending against him and petitioner No. 2 has undergone actual custody of 01 year, 04 months and 22 days and there is no other case pending against him. He further on instructions submits that the charges were framed on 30.01.2024 and out of 27 prosecution witnesses, 03 prosecution witnesses have been examined. However, in view of the serious allegations against the petitioners, they are not entitled to the concession of regular bail.

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

7. Admittedly, petitioner No. 1 has undergone actual custody of 01 year, 04 months and 20 days and there is one more case pending against him and petitioner No. 2 has undergone actual custody of 01 year, 04 months and 22 days



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and there is no other case pending against him. The investigation of the case is complete and out of total of 27 prosecution witness, only 03 prosecution witnesses have been examined. Moreover, it is a case of circumstantial evidence and the conclusion of trial will take a considerable period and further detention of the petitioners will not serve any useful purpose and will be 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.

8. 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.

9. The veracity of the allegations leveled against the petitioners shall be established during the course of the trial. Admittedly, the charges have been framed and only three prosecution witness have been examined till date, therefore, this Court is of the view that further incarceration of the petitioners would not serve any purpose.

10. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioners are ordered to be released on regular bail on their furnishing adequate bail/surety bonds to the



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satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioners shall also abide by the following conditions:-

- (i) The petitioners will not tamper with the evidence during the trial.
- (ii) The petitioners will not pressurize/intimidate the prosecution witness(s).
- (iii) The petitioners will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (iv) The petitioners shall not commit an offence similar to the offence of which they are accused of, or for commission of which they are suspected.
- (v) The petitioners 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 them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

11. 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.

12. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

07.11.2024
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(KIRTI SINGH)
JUDGE

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