

Neutral Citation No. 2024:PHHC:007107
CRM-1631-2024 in/and CRM-M-57248-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-1631-2024 in/and CRM-M-57248-2023
Reserved on: January 16, 2024
Pronounced on: January 19, 2024

Jitender @ Rahul

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Prashant Singh Chauhan, Advocate for the petitioner.

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

Mr. Gopal Sharma, Advocate for the complainant.

DEEPAK GUPTA, J.

CRM-1631-2024

This is an application under Section 482 Cr.P.C. to place on record the copy of the order of acquittal dated 02.11.2022 pertaining to some other case, besides the bail order dated 12.07.2021 as Annexures P-6 and P-7 respectively.

Respondent-State has no objection to place on record the aforesaid documents.

Considering the nature of the documents, application is allowed.

Annexures P-6 and P-7 are taken on record.

Neutral Citation No. 2024:PHHC:007107
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Main case

By way of this petition filed under Section 439 Cr.P.C., petitioner prays for his release on regular bail in case arising out of FIR No.0129 dated 29.07.2022, under Section 302 and 34 of IPC, registered at Police Station Rewari Sadar @ Sadar Rewari, District Rewari.

2. FIR was lodged on the complaint of Jai Prakash S/o Hari Ram, resident of village Lisana, as per which he received information at about 7 p.m. on 29.07.2022 that his nephew Karambeer @ Prithvi had been killed at old Haveli, Lisana by Sanjay @ Tinda (co-accused) S/o Rajender, resident of Lisana along with his associates by strangulation. Receiving the said information, complainant along with Vijay S/o Kashi Ram reached the spot and found his nephew Kamambeer @ Prithvi lying dead with marks on his neck.

3. FIR was registered. Investigation was carried out. Spot was inspected. Statement of witnesses were recorded. Postmortem was got conducted. On 29.07.2022 itself, Sanjay @ Tinda was arrested and during the course of interrogation, he admitted his involvement in the crime. He suffered disclosure statement, disclosing that on that date i.e., on 29.07.2022, he along with Rahul @ Jitender (*petitioner*) and Rohit @ Lila were sitting under a Pipal tree after consuming alcohol at about 10-10.30 a.m., when Karambeer @ Prithvi (deceased) came at the shop of Nirmala to purchase *bidi*, having a country-made bottle of liquor in his hand. They called him and all of them went to the house of Rohit @ Lila, where he (Sanjay @ Tinda) had altercation with the deceased and that he gave 4-5

slaps to Karambeer @ Prithvi and then with his *angocha*, strangled Karambeer @ Prithvi, making him unconscious. Then, he along with Rohit @ Lila and Jitender @ Rahul put Karambeer @ Prithvi under a hand pump, but said Karambeer @ Prithvi did not gain consciousness. Then he and Rohit @ Lila lifted Karambeer @ Prithvi by hands and Rohit @ Lila caught him by feet and they took him to the abandoned Haveli of Shubh Ram, where Jitender @ Rahul kept guard in the street, whereas he (Sanjay @ Tinda) and Rohit @ Lila dragged Karambeer @ Prithvi inside he room of Haveli and he kicked on the throat of Karambeer @ Prithvi and strangled him. He further disclosed that all three of them took the mobile, ATM card of Karambeer @ Prithvi and came to Bus Stop of Rewari, where they purchased two bottles of liquor by using ATM card of Karambeer @ Prithvi. He agreed to take blame of killing Karambeer @ Prithvi.

4. During further investigation, co-accused Jitender @ Rahul, i.e., petitioner and Rohit @ Lila were also arrested and both of them suffered disclosure statements on the similar lines. The *angocha* used in the crime was recovered from Sanjay @ Tinda; ATM card of deceased was recovered from petitioner Jitender @ Rahul, whereas mobile of the deceased was recovered from Rohit @ Lila. After conclusion of the investigation, final report under Section 173 Cr.P.C. was filed, citing 25 prosecution witnesses, out of which 04 have already been examined.

5. It is contended by learned counsel for the petitioner that petitioner has been falsely implicated on the basis of disclosure statement

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CRM-1631-2024 in/and CRM-M-57248-2023

of co-accused Sanjay @ Tinda. Even in that disclosure statement, Sanjay @ Tinda has not specified any role of the petitioner. The case is based upon hearsay evidence or on the disclosure statement of co-accused with no injury or any overt act attributed to the petitioner. Learned counsel further contends that Section 34 IPC has been wrongly invoked because it is Sanjay @ Tinda, who is attributed to have strangled the deceased. Learned counsel further submits that petitioner is in custody for the last more than 01 year and 05 months and so, in all these circumstances, petitioner be released on bail.

6. Strongly opposing the bail petition, learned State counsel, ably supported by counsel for the complainant has drawn attention towards the statement of PW Nirmala recorded under Section 161 Cr.P.C., which would reveal that on 29.07.2022 at about 10-10.30 a.m., all the three accused, i.e. Sanjay @ Tinda, petitioner Jitender @ Rahul and Rohit @ Lila had forcibly taken away Karambeer @ Prithvi with them despite the fact that said Nirmala had asked them not to do so and that in the night time, she had come to know about the murder of Karambeer @ Prithvi. Learned State counsel further submits that as per disclosure statement suffered by Sanjay @ Tinda as well as the petitioner and other co-accused, though initially co-accused Sanjay @ Tinda had pressed the neck of the deceased by putting *gamcha*, but that had only made him unconscious and then, all the three accused including petitioner had put the deceased under the hand pump and as he did not gain consciousness, then they took him to the abandoned Haveli of Shubh Ram, where petitioner kept guard in the

Neutral Citation No. 2024:PHHC:007107
CRM-1631-2024 in/and CRM-M-57248-2023

street and Sanjay @ Tinda gave kicks at the throat of the deceased. Learned State counsel submits that no effort was made at that time by the petitioner or co-accused Rohit @ Lila to stop Sanjay @ Tinda, indicating the common intention of all of them to kill Karambeer @ Prithvi. Not only this, after killing Karambeer @ Prithvi, they celebrated by purchasing liquor by using the ATM card of the deceased and that ATM card was later on recovered from the petitioner. Learned State counsel has also drawn attention towards the status report revealing that the petitioner is involved in 02 other cases.

7. Replying to the aforesaid contentions, learned counsel for the petitioner submits that the petitioner has already been acquitted in a case arising out of FIR No.95 dated 07.07.2021, registered at Police Station Sadar Rewari, vide judgment dated 02.11.2022 (Annexure P-6); whereas, in another case arising out of FIR No.267 of 2021, registered at Police Station City Rewari, petitioner has been allowed bail vide order dated 12.07.2021 (Annexure P-7).

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

9. The charge against the petitioner is quite serious. The offence is grave entailing punishment even up to death. The petitioner along with two other co-accused was last seen with the deceased as per the statement of PW Nirmala. The disclosure statement suffered by co-accused as well as the petitioner would make out that though initially altercation took place between deceased and co-accused Sanjay @ Tinda and that Sanjay

Neutral Citation No. 2024:PHHC:007107
CRM-1631-2024 in/and CRM-M-57248-2023

@ Tinda pushed the deceased and pressed his neck with *gamcha*, but that only made him unconscious. Thereafter, petitioner along with other co-accused put the deceased under the hand pump, but as he did not gain consciousness, all three of them took him to an abandoned Haveli, where petitioner kept on guard and Sanjay @ Tinda-co-accused gave kick blows to the deceased. *Prima facie*, these acts show the common intention of the petitioner along with co-accused.

10. Having regard to the aforesaid facts and circumstances, but without commenting anything further on the merits of the case, this Court is not inclined to release the petitioner on regular bail.

Dismissed.

January 19, 2024
Sarita

(DEEPAK GUPTA)
JUDGE

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