

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.M.P.(M) No. 379 of 2009
with
Cr.M.P.(M) No. 380 of 2009
Cr.M.P.(M) No. 381 of 2009

Judgment reserved on: 27.5.2009.
Dated of Decision: May 29, 2009.

1. Cr.M.P.(M) No. 379 of 2009

Raman Kumar	.....	Petitioner.
	Versus	
State of H.P.	.....	Respondent.

2. Cr.M.P.(M) No. 380 of 2009

Vishal @ Vicky	.....	Petitioner.
	Versus	
State of H.P.	.....	Respondent.

2. Cr.M.P.(M) No. 381 of 2009

Arpan	.....	Petitioner.
	Versus	
State of H.P.	.....	Respondent.

Coram

The Hon’ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Petitioners : Mr. M.S. Guleria, Advocate.

For the Respondent : Mr. J.S. Guleria, Asstt. Advocate General.

Surinder Singh,J:

In all the above applications, the petitioners were arrested in FIR No.384/08 dated 12.12.2008, registered in Police Station Manali, under Sections 302, 342 read with Section 34 of the Indian Penal Code.

The admitted facts are that :

Whether reporters of local papers may be allowed to see the judgment? Yes.

- (i) Madan Lal s/o Sh. Him Chand complainant, was an unmarried youth, resident of village Archidi, District Kullu, H.P.
- (ii) Subhash Chand father of Raman Kumar a cloth merchant, resident of Village Ladbhadol, District Mandi, H.P. had employed Madan Lal (deceased) as a servant in his shop.
- (iii) Petitioner Raman Kumar had taken a hotel on lease at Manali, whereas other petitioners Vishal @ Vicky and Arpan are his friends.
- (iv) Raman Kumar was having his affairs with Ms. Suman Bodh, a prosecution witness.
- (v) The statement of Ms. Suman Bodh under Section 164 of the Code was recorded before the Magistrate.

It is alleged that on 11.12.2008, the deceased had gone to the house of his sister Nardu Devi, in village 'Ghurdor'. Around 3.00 p.m., he received a call on his Cell No.98176-51203 from Ms. Suman Bodh and went to Manali on the pretext that he was going there in connection with some urgent work. He was found having serious injuries on the Motorable-Road at 'Bran' and brought to the Mission hospital at 7.30 p.m. He was unconscious.

Around 8.00 p.m., Him Chand father of the deceased Madan Lal was informed by his son-in-law husband of Nardu Devi, on telephone that Madan Lal was admitted in the hospital in an injured condition.

Him Chand reached hospital and found Madan Lal in an unconscious condition and he died at 2.00 a.m.

The complainant reported the matter to police as he suspected some foul play in the death of his son. His statement culminated into the FIR aforesaid.

During the investigation, police took into possession the telephone details of the deceased and detected that he had a talk on the Mobile No.98162 48001 of one Ms.Suman Bodh. Thereafter she was interrogated.

Precisely, Ms. Suman Bodh disclosed that about 1 ½ years ago, she developed intimacy with petitioner Raman Kumar, through his mobile No.98176-51203. Thereafter, she met him during Kullu Dussehra. About 2 months before the alleged incident, she had given the missed call on the above Mobile of Raman Kumar, which was attended by deceased Madan Lal,

thereafter Madan Lal established the contact with her through his mobile and started wooing her.

On 10.12.2008, she disclosed this fact to Raman Kumar. He informed her that Madan Lal had committed theft of one gold chain of his sister-in-law and decamped with Rs.15,000/-. She was asked to contact Madan Lal and find out his location. She did the same. Madan Lal told her that he would be meeting her on 11.12.2008 around 5 p.m. at Simsa bridge. Around 8.45 p.m., she informed petitioner Raman Kumar whether Madan Lal met him and if the gold chain and money were recovered. She was informed by Raman Kumar that he gave 2/3 slaps to him and thereafter Madan Lal had come under the vehicle.

The police took into possession the Cell phone details of all the three persons, namely deceased Madan Lal, Raman Kumar and Ms. Suman Bodh and found a ring of truth in her version.

During the investigation of this case, the police interrogated Ram Swarup, waiter of the hotel Aroma. He disclosed that on 11.12.2008, the petitioners Vishal @ Vicky

and Arpan had visited the hotel and occupied room No.116 and after watching the T.V. for sometime, left the room along with Raman Kumar and again in the evening, all the three visited the hotel. Next day i.e. on 12.12.2008, around 9.00 a.m., they left the place.

The petitioners were arrested on 18.12.2008 and interrogated by the police. On 20.12.2008, petitioner Vishal @ Vicky got recorded his statement pointing out the places they visited and the place of occurrence in his Alto Car.

The police has completed the investigation and concluded that the deceased Madan Lal was given beatings by the petitioners thereafter he was thrown down from a precipice.

Notice of the applications was given to the State. Report has been filed.

Mr. J.S. Guleria, learned Assistant Advocate General has objected to the bail of the petitioners, on the ground that the circumstantial evidence on record established the art and part of the petitioners in the commission of the

crime, which is a heinous offence and the petitioners have no case for bail.

Mr. M.S. Guleria, learned counsel for the petitioners has vehemently argued that there is not an iota of evidence against the petitioners connecting them with the alleged offence. The above circumstance only point out at the worst a grave suspicion regarding the involvement of the petitioner Raman Kumar, which otherwise cannot takes a place of proof. The other evidence collected by the police is not a legal evidence, therefore, the petitioners have a case for bail.

I have given my thoughtful consideration to the rival contentions of the parties and have examined the investigation file, which contains the Cell phone details of the deceased, witness Suman Bodh and the accused petitioner Raman Kumar. The alleged incident had taken place on 11.12.2008. The deceased was brought in the injured condition to the hospital at 7.30 p.m. He was unconscious and remained in coma till his death, during the intervening night of 11th /12th December, 2008. He was having

various injuries on his person and it was a case of homicide.

Prima-facie, the circumstance points out towards the involvement of petitioner Raman Kumar in the alleged crime, but what value should be attached to the evidence collected by the police, is a matter of appreciation after the examination of the witnesses during the trial. Therefore, the petitioner Raman Kumar has no case for bail.

In so far as the other petitioners namely Vishal @ Vicky and Arpan are concerned, the standard of evidence against them does not justify their detention in this case, as such, the application for seeking bail moved by petitioner Raman Kumar under Section 439 Cr.P.C. is dismissed, whereas, the applications for bail qua Vishal @ Vicky and Arpan are allowed and both the petitioners are ordered to be released on bail on their furnishing the bail bonds in the sum of Rs.20,000/- each with one surety of the like amount, to the satisfaction of the learned Chief Judicial Magistrate, Kullu and this bail shall be

subject to the following conditions that the petitioners Vishal @ Vicky and Arpan:-

- (i) shall not temper with the prosecution evidence in any manner and shall present themselves in the court as and when required to do so;
- (ii) 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.

Needless to say that in case, the petitioners shall cause any breach of the conditions, mentioned above, their liberty of bail shall be cancelled.

Applications are accordingly disposed of.

Any observation made hereinabove is strictly for deciding the bail applications and it shall not affect the merits of the case in any manner.

An authenticated copy of this order be sent to the learned Chief Judicial Magistrate, Kullu, for information and necessary action at his end.

In addition, copy of this order be given dasti on usual terms.

May 29, 2009.
(Pds)

(Surinder Singh)
Judge.