

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-20396 of 2015 (O&M)
Date of decision : October 15, 2015

Lakhan GargPetitioner
versus
State of HaryanaRespondent

Criminal Misc. No. M-28156 of 2015

Ramesh GargPetitioner
versus
State of HaryanaRespondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. R.S.Cheema, Senior Advocate with
Mr. J.S.Mehndiratta, Advocate, for the petitioners

Mr. Deepak Sabharwal, Addl. A.G. Haryana assisted by
Mr. N.S.Shekhawat, Advocate, for the complainant

Fateh Deep Singh, J. (Oral)

This order shall dispose of two bail applications, one under section 438 Cr.P.C whereby petitioner Lakhan Garg had sought anticipatory bail whereas in the other petitioner Ramesh Garg has preferred regular bail application, both of whom are accused in this case for having been instrumental in the death of deceased Mahabir Prasad.

The precise allegations as per complainant Ajay Singhal son of the deceased are that there was a business transactions between the firms of the deceased and that of the accused-petitioners for the last almost two decades and the accused side owed money towards the deceased which it is alleged was not being paid. It is further alleged that on 30.3.2015 around 10.30 AM, the deceased left his place telling the complainant that he has been called by petitioner Ramesh Garg for his payment at the business premises of the accused in village Ghumthala. It is subsequent thereto on the same day, a telephonic call was received intimating the deteriorating condition of the deceased and consequent thereto his death on the same day.

Mr. Cheema, Senior Advocate assisted by Mr. Mehndiratta has submitted that the initial version spelt out had pointed towards murder allegations which has subsequently metamorphised into one of abetment to suicide and that the report of Chemical analysis of the viscera sufficiently bears out to be on account of consumption of aluminum phosphide and in the absence of any injury to the person is a clear-cut case of suicidal death due to loss at the business. Arguing that even the alleged suicide note is a subsequent fabrication alleged to have been recovered after more than one month and three weeks of the occurrence and even handwriting expert's opinion does not sufficiently brings forth that the writing in the body of this alleged document belonged to the deceased and that the name of Lakhan Garg does not figure in the ruqa/FIR and further submitting that petitioner

Ramesh Garg is in custody since 15.4.2015 and as on date even after the submission of the challan there is no worth-while evidence as to the connectivity with the death of the deceased and has cited **(2010) 1 SCC 750, Gangula Mohan Reddy vs State of Andhra Pradesh; (2010) 8 SCC 628, Madan Mohan Singh V. State of Gujarat and another; (2010) 12 SCC 190 S.S.Cheena vs. Vijay Kumar Mahajan and another; (2010) 1 SCC 707, Amallendu Pal alias Jhantu V. State of West Bengal' (2002) 5 SCC 371 Sanju alias Sanjay Sengar V. State of M.P.; (2001) 9 SCC 618, Ramesh Kumar V. State of Chattisgarh; 1983 RCR (Cri) 553, Raj Kumar V. State of Punjab; 2014 (5) Law Herald 3970, Pritam Singh V. State of Punjab; 2014 (4) Law Heard 3372, Veerpal Kaur V. State of Punjab; 2013 (4) RCR (Cri) 515, Gurjant Singh and others V. State of Punjab; 2013 (4) RCR (Cri) 1013 and 2009(4) RCR (Cri) 467.**

The submissions of the petitioners' counsel have been forcefully controverted on behalf of the State by Mr. Deepak Sabharwal assisted by Mr. N.S. Shekhawat representing complainant contending that petitioner Lakhan Garg is evading his arrest since the date of the occurrence and his custodial interrogation was essential and has sought to level insinuations against investigating agency for unduly lingering the case and in its partisan attitude and has sought to put forth their apprehension that if allowed bail, the petitioners would influence the prosecution witnesses.

Appreciating the contentions of the two sides, petitioner

Ramesh Garg who is in custody has been sufficiently interrogated and the counsel for the State could not bear out any material evidence except a suicide note and death on account of consumption of poisonous substance. The factum of belated recovery of alleged suicide note which neither carries any date nor the prosecution could convince this Court on the basis of the expert opinion was in the handwriting of the deceased are matters which create a question mark over its credibility coupled with the fact that it is the own admission of the State side that there is no apparent sign of any injury to show forcible administration of the poisonous substance to the deceased as there is no witness to this episode. Apparently, as per the submissions, there is no appreciable evidence prima facie to show as to what was the immediate provocation/abetment from the side of the accused and thus very applicability of section 306 IPC too is debatable one being a cause of death alleged overdues spanning over a period of almost 20 years are matters which certainly have a cascading effect on the mind of the Court when different statements recorded under section 161 Cr.P.C. at different times had undergone a sea-change. The trial is not likely to be concluded in near future and no useful purpose will be served by continuing detention of petitioner Ramesh Garg and nothing is to be recovered from petitioner Lakhan Garg and that his joining the investigation will suffice the purpose and in the totality of what has been observed, without meaning to express any opinion on merits of the case, both the petitions are allowed.

In the event of arrest, petitioner-Lakhan Garg shall be released on bail to the satisfaction of arresting/investigating officer till submission of report under Section 173 Cr.P.C. (challan). Thereafter, petitioner will be permitted to furnish regular bail bonds to the satisfaction of the trial Court. The petitioner shall, however, join the investigation as and when called for and shall also abide by the conditions specified under section 438 (2) Cr.P.C. Presently the petitioner is directed to join the investigation within 10 days.

Petitioner Ramesh Garg is ordered to be released on regular bail to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate, Yamuna Nagar at Jagadhri.

Both the petitions stand disposed off accordingly.

October 15, 2015
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(Fateh Deep Singh)
Judge