

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

CRM-M-24609-2015 (O&M)

Date of Decision: October 16, 2015

Sandeep Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.P.S.Ahluwalia, Advocate
for the petitioner.

Mr.K.S.Pannu, DAG, Punjab.

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1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

NARESH KUMAR SANGHI, J.(Oral)

Prayer in this petition, filed under Section 439, Cr.P.C., is for grant of regular bail to the petitioner, Sandeep Kumar, son of Shri Sansar Chand, resident of Mohalla Haler, Police Station, Talwara, Hoshiarpur, who has been booked for having committed the offence punishable under Section 306, IPC, in a case arising out of FIR No.32, dated 13.07.2014, registered at Police Station, Talwara, District Hoshiarpur.

Learned counsel contends that the marriage of the petitioner with Vandana Kumari (since deceased) was solemnized about twelve years prior to her death; the presumption enshrined under Section 113-A of the Evidence Act, 1872, would not be available to the prosecution; despite availing approximately 20 dates, after framing of the charges on 16.10.2014, the prosecution has not been able to examine the witnesses except one witness and that too his examination-in-chief only. After examination-in-chief of the said witness, an application under Section 319, Cr.P.C. has been moved for summoning of the additional accused to face trial with the petitioner and in the event of acceptance of the said application, the petitioner has to face *de novo* trial; it has also been pointed out that the petitioner is in custody from 15.07.2014 and no purpose would be served to detain him in custody any more.

Learned counsel for the State has very fairly conceded that an application under Section 319, Cr.P.C. has been presented by the prosecution/informant after examination-in-chief of PW1; he further fairly concedes that despite numerous opportunities, the prosecution has not been able to lead its entire evidence. However, he has opposed the grant of bail to the

petitioner being the husband of the deceased.

I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

It is the second petition for grant of bail to the petitioner. Earlier one was dismissed vide order dated 12.01.2015 passed in CRM-M-42505-2014.

The maximum sentence prescribed under Section 306, IPC, is rigorous imprisonment for 10 years; despite the fact that the petitioner is behind the bars from 15.07.2014, the prosecution has not been able to produce its entire evidence and that after examination-in-chief of PW1, an application under Section 319, Cr.P.C., has been presented by the prosecution for summoning of an additional accused to face trial. In the event of acceptance of the said application, the petitioner would have to face *de novo* trial. The petitioner is neither required nor involved in any other case. Therefore, the present petition is accepted. Petitioner Sandeep Kumar, son of Shri Sansar Chand, resident of Mohalla Haler, Police Station, Talwara, Hoshiarpur, is directed to be released on bail during pendency of the trial of the present case subject to his furnishing bonds in the sum of ₹1,00,000/- (Rupees

one lac only) with one surety in the like amount to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Hoshiarpur.

It is made clear that in the event of the petitioner pressurizing the witness to depose in his favour, in that eventuality the prosecution will be free to move an application for cancellation of the present concession.

October 16, 2015
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(NARESH KUMAR SANGHI)
JUDGE