IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-29212 of 2015
Date of decision : 24.09.2015

Hasab Khan

..... Petitioner

versus

State of Haryana

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sarfraj Hussain, Advocate
for the petitioner

Mr. Gurdas Singh Salwara, DAG Haryana

ANITA CHAUDHRY, J. (ORAL)

The petitioner is seeking anticipatory bail in FIR No. 1130 dated 17.11.2013 registered at Police Station Sohna Road District Gurgaon under Sections 341/365/302/34 IPC.

A complaint was made by Naresh on 15.11.2013. The complainant and his brother Sukhbir and one Rakesh and some other relatives were going in a tempo from Hodal to their village. The vehicle was driven by Sukhbir. On the way they came across Mohan Lal and some others who caught hold of Rakesh and Sukhbir. The complainant was kicked and he fainted. Those persons took Rakesh and Sukhbir with them. Two days later the dead body of Sukhbir was found. Sukhbir had earlier been arrested in FIR No. 759 dated 05.08.2013 under Sections 392, 394, 342 IPC.

The post mortem was conduced at Police Station Sohna. No external injury was found on the body. On the insistence of the family, another postmortem was got done at PGI Rohtak. A

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Board consisting of three doctors including the one who had done the first postmortem in PGIMS Rohtak gave the cause of death as shock and hemorrhage on account of injuries suffered.

The allegations against the petitioner are that he was part of the Investigating team and Sukhbir was chased by the police officials for about 8-10 killas. After a long pursuit, he was caught and was being made to sit in the vehicle and he resisted and tried to run away but he was forcibly put in the vehicle. The petitioner claims that Sukhbir started hitting against vehicle but he calmed down once he sat in the vehicle.

Learned counsel for the petitioner contends that anticipatory bail had been allowed to Sunil who was heading the team and the petitioner is not at fault and was still on duty. The counsel had placed on record copy of the certificate issued by SHO, PS Sector 56, Gurgaon.

Learned counsel for the complainant supports the petitioner and urges that the complaint was given under some suspicion and the police officials were not involved.

Learned State counsel submits that the complainant has been won over by the police officials and the petitioner is absconding and is not joining the investigation despite the fact that notice under Section 160 Cr.P.C. was issued and non-bailable warrants were got issued through the Court and vide letter dated 19.06.2015, DSP State Crime Branch, Gurgaon had written to State to stop the salary of the petitioner. It was urged that when bail was allowed to Sunil the case was at the initial stages and status report was submitted in the

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Court at the intial stages of investigation and it was later found that police officials were tempering with evidence and on a complaint, the opinion of the doctors of PGI Rohtak was obtained and a Board was constituted who had given its report that the cause of death was due to injuries which were 12 in number.

It is a case where person has died in police custody. In the first postmortem report no injuries were reflected. A judicial enquiry was held. The concluding paragraph is similar to the report given by Human Right Commission. Both the Magistrate and the Commission did not have the opinion of the Medical Board before it. Subsequently, a Board comprising of three doctors had given a report that the death was on account of the cumulative effect of the injuries sustained by Sukhbir. Sukhbir had died in police custody. The petitioner is avoiding his arrest and has not joined the investigation. The allegations are grave. No case for anticipatory bail is made out.

The petition is dismissed.

September 28, 2015 **(ANITA CHAUDHRY)**
reena **JUDGE**

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