

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

Crl. Misc. No.M-39935 of 2014

Date of Decision: 10.02.2015

Avtar Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Ms. Ritu Punj, Addl. A.G., Punjab
for the respondent-State.

Mr. Deepak Kundu, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in Complaint No.24-A dated 23.10.2010 titled as **Gurmit Kaur vs Ram Rattan and others** for offence punishable under Section 302 read with Section 34 of the Indian Penal Code, during pendency of the trial.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the complaint case, whereas, he was not involved in any manner. He further submits that the petitioner has been implicated only on the basis of an affidavit left by deceased, which was recovered from the dicky of his motorcycle, wherein, the deceased in anticipation of his death has held the petitioner liable. Learned counsel also

submits that when the inquest proceedings were conducted, the family members of the deceased did not level any allegation against the petitioner and after about 3½ months of the incident, an FIR was registered due to death of husband of the complainant. The matter was investigated into and cancellation report was filed way back on 16.03.2007. Thereafter, a petition was filed by respondent No.2 for transfer of investigation but after conducting a detailed and thorough investigation, the petitioner and his co-accused were not found to be involved. Learned counsel also submits that in the investigation conducted by Special Investigating Team, nothing substantial was found against the petitioner and hence, untrace report was submitted. Then also, the petitioner and his co-accused were summoned. Learned counsel also submits that the co-accused of the petitioner has been released on regular bail. The affidavit found in the *dicky* of the deceased is alleged to have been executed by him. On the basis of report of Forensic Science Laboratory, Chandigarh, the signatures of the deceased on the affidavit do not tally with his admitted signatures. There is no other connecting evidence to involve the present petitioner. Learned counsel also submits that as per report of Chemical Examiner, no poison was found and as per opinion of the doctor, the cause of death was *Asphyxia* due to smothering. Learned counsel also submits that there was property dispute between the petitioner and the deceased and there was motive to falsely implicate him. The petitioner is in custody since 08.10.2013 and statements of material witnesses including the complainant have been recorded and now, no purpose would be served by keeping him in custody.

Learned counsel for the State as well as for the complainant oppose bail of the petitioner on the ground of seriousness of offence and also submit that the petitioner cannot claim parity with his co-accused as

the medical ground was also considered while granting bail to co-accused by Additional Sessions Judge, Hoshiarpur. The custody period of the petitioner as well as report of the Forensic Science Laboratory, Chandigarh and opinion of the doctor have not been disputed.

Heard the arguments of learned counsel for the parties and have also gone through the order passed by the trial Court.

Admittedly, the petitioner was found innocent during investigation and subsequently, he has been summoned in the complaint filed by the complainant. An affidavit, which was recovered from the *dicky* of the motor-cycle of the deceased, was sent to Chemical Examiner and the signatures of the deceased on the affidavit did not tally with his admitted signatures. The affidavit was also sent to Government Handwriting Expert twice for comparison with the admitted signatures of the deceased and the following report was given by the Expert :

“ I have carefully and thoroughly examined that red enclosed questioned signatures from the original documents in all aspects of hand writing identification and detection of forgery with the help of scientific aid and it has been concluded that the person who wrote the red enclosed standard signatures stamped and marked A1 to A8 did not write the red enclosed questioned signatures signed and marked Q1 to A3.”

As per findings recorded by the Special Investigating Team, the doctor found that no external injury mark was there on the dead body and thereafter, the viscera was sent for chemical analysis. It was found in the Chemical Examiner Report that no poison was there and the cause of death was *asphyxia* due to smothering.

Since, the petitioner is behind bars for the last more than one year and four months and the complainant has also been examined; no useful purpose would be served by keeping the petitioner behind bars and

moreover, the bail has been granted to co-accused of the petitioner, namely, Ram Rattan by the lower Court not only on medical ground but on merits as well, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court.

10.02.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE