

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

**Criminal Misc. No. M-3340 of 2016 (O&M)
Date of decision: 11.02.2016**

Lachman

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. J.S. Bedi, Sr. Advocate with
Mr. Sunil Sihag, Advocate
for the petitioner.

Ms. Neelam Kashyap, DAG, Haryana
for the respondent – State.

Mr. Munish Mittal, Advocate
for the complainant.

Daya Chaudhary, J. (Oral)

CRM-4626 of 2016

This application is for placing on record Charge-sheet as
Annexure P-9.

Application is allowed and Annexure P-9 is taken on
record.

CRM-M-3340 of 2016

The present petition has been filed under Section 439
Cr.P.C. on behalf of petitioner-Lachman for grant of regular bail in

case FIR No.42 dated 11.06.2015 registered under Sections 304-B read with Section 34 of Indian Penal Code (for short 'IPC') or under Section 306/34 IPC or in alternate under Section 302 read with Section 34 or Section 120-B IPC at Police Station Women Cell, Sonapat.

Learned counsel for the petitioner submits that initially, the FIR was registered under Section 304-B IPC but during the course of investigation, offence was converted to Section 306 IPC as marriage was nine years old. He further submits that in the FIR, allegations of harassment and demand of dowry were there but the FIR was not registered under Section 498-A IPC. Learned counsel further submits that the deceased was suffering from tuberculosis as well as other diseases and was under depression and, therefore, committed suicide. Only because of the reason that alternate charge under Section 302 IPC has been framed, it cannot be said that charge has been framed under Section 302 IPC. Learned counsel also submits that there was no evidence before the trial Court to frame charge under Section 302 IPC and only alternate charge was framed. Learned counsel for the petitioner has also relied upon judgment of Hon'ble the Supreme Court in **Jasvinder Saini and others vs. State (Govt. of NCT of Delhi), 2013(3) SCC (Cri) 295** in support of his contentions and submits that the same was not brought to the notice of the trial Court whereas charge should not have been framed without having any evidence. The petitioner is in custody since

11.06.2015 and all material witnesses have been examined. There is no possibility that the petitioner may influence the remaining witnesses.

Learned State counsel opposes grant of regular bail to the petitioner on the ground of seriousness of the offence but she has not disputed the custody period.

Learned counsel for the complainant submits that it was a case of murder and not of suicide and framing of charge has not been challenged so far.

Heard arguments of learned counsel for the parties and have also perused the allegations levelled in the FIR as well as charge.

Admittedly, the FIR was registered under Section 304-B read with Section 34 IPC but during course of investigation, offence was converted to Section 306 IPC and alternate charge under Section 302 read with Section 34 IPC was framed. It is also not disputed that no evidence was there before the trial Court when the alternate charge was framed.

In view of ratio of judgment in **Jasvinder Saini's case (supra)**, alternate charge can be framed only when the evidence is there but in the present case, no such evidence has come on record and the alternate charge has been framed without having any evidence. It cannot be said at this stage that offence under Section 306 IPC is made out. It will be seen during trial on the basis of

evidence available before the trial Court as to whether Section 306 IPC is made out or Section 302 IPC. Nothing can be said by this Court as trial is going on and all material witnesses have been examined.

Keeping in view the submissions made by learned counsel for the petitioner and also that the petitioner is in custody since 11.06.2015; all material witnesses have been examined and the trial may take some time in final conclusion, the present petition is allowed and the petitioner (Lachman) is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court.

11.02.2016
neetu

(DAYA CHAUDHARY)
JUDGE