

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

Crl. Misc. M-43046-2016 (O&M)
Date of Decision: 07.12.2016

Karuna Kant

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.S. Rai, Senior Advocate with
Mr. Karan Pathak, Advocate
for the petitioner.

Mr. Sharad K. Yadav, DAG Haryana
for the respondent-State.

JAISHREE THAKUR, J. (Oral)

Mr. Sunil Panwar, Advocate, puts in appearance on behalf of complainant on his own and files his vakalatnama, which is taken on record.

The instant petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.109 dated 27.03.2016 registered at Police Station Bhondsi, District Gurgaon, under Sections 302, 304-B, 498-A of the Indian Penal Code (though by way of challan only Sections 498-A/306 of the Indian Penal Code have been retained).

The petitioner herein is the husband of the deceased, who

expired on 26.03.2016. It is submitted that their marriage was solemnized in 2008. Various differences occurred between the parties leading to filing of a divorce petition by the petitioner, and cases under Section 125 Cr.P.C. and Domestic Violence Act by the deceased. Ultimately, the disputes were resolved and the petitioner and deceased decided to reside together. Unfortunately, wife of the petitioner died and an FIR was registered under Section 302 of Indian Penal Code, but in the challan presented it is for offences under Section 306 of Indian Penal Code. Charges too have been framed.

An application was preferred before the learned Additional Sessions Judge, Gurgaon, who dismissed the application only on the ground that the material witness being a six years old son, has yet to be examined in court. Merits of bail application were not taken into consideration, while dismissing the said application.

Before this court, it is argued by learned counsel for the petitioner that petitioner herein is in custody since 28.03.2016 under the aforesaid FIR, challan has been presented and charges have been framed and a reading of the statement made by the child witness namely Arnab under Section 161 Cr.P.C., would not constitute the offences as framed under Sections 306/498-A of the Indian Penal Code.

Per contra, learned counsel appearing on behalf of the complainant alleges that proper investigation has not been done in the matter and in this regard, an application was preferred on 13.10.2016 for proper investigation and at this stage, the evidence of the child witness is material and before that application for bail cannot be considered.

I have heard learned counsel for the parties.

Without giving an opinion on the merits of the case, in the instant petition, this court is of the opinion that even though charges have been framed and the petitioner is in custody since 28.03.2016, it would be expedient that the statement of the witness, who is a minor and son of the petitioner should be recorded.

The case is now listed for 07.03.2017 before the sessions court, which is three months hence. Normally this court would not interfere in the fixing of dates by the sessions court as it is for any court to manage its working, but in the instant case, since it is the evidence of a minor aged 06 years, it would be in his interest that his evidence is completed at an early date. Learned counsel for the complainant would have no objection in case, the case is preponed and evidence of minor witness is recorded.

In view of the above, this court deems it appropriate to dispose of this petition simplicitor by giving directions to the sessions court to prepone the date fixed from 07.03.2017 to 11.01.2017 for recording the evidence of child witness. Let the said witness be summoned for 11.01.2017, on which date his evidence be recorded. However, if for some reason, the sessions court is unable to take up the case on 11.01.2017, a **short date** be given thereafter, as convenient to the court.

This petition is disposed of with the aforesaid directions.

December 07, 2016

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No