

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc. No.M-5194 of 2015

Date of Decision: January 22, 2016

Arvind Kumar Sharma son of Sh.Ram Kumar
Sharma

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.RS Cheema, Senior Advocate with
Ms.Tanu Bedi, Advocate for the petitioner.

Mr.RS Randhawa, Addl. Advocate General, Punjab.

Mr.SS Sandhu, Advocate for the complainant.

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TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 439 of the Code of Criminal Procedure seeking benefit of regular bail to the petitioner pending trial in case FIR No.256 dated 6.10.2014, under Section 302 of the Indian Penal Code registered at Police Station City Kapurthala.

2. FIR was registered on the statement of Subhash Chander, retired Colonel from the Indian Army, aged 70 years. It was stated that daughter of the complainant, namely, Neelam was married to Arvind Kumar (present petitioner) in the year 2000 and out of wedlock, two sons were born. It was stated that Arvind

Kumar had been harassing Neelam for the sake of dowry. On 1.10.2014, Neelam along with the younger son Kartik had come to the parental house at Panchkula and had informed the complainant that her husband had raised a demand of ₹2 lacs for purchase of a big car. As per complainant, he had conveyed to his daughter that he was not in a position to make over such amount, but he would think it over and had insisted upon his daughter to extend her stay at the parental house. Thereafter, on 5.10.2014, Neelam along with her son had boarded a bus for going back to her matrimonial home at Kapurthala. At 5.00 p.m., Neelam had informed the complainant on telephone that her husband Arvind Kumar had picked her up as also the son from Jalandhar Bus Stand in a car and thereafter, while proceeding to Kapurthala, a quarrel had taken place. Complainant further stated that on the following day i.e. 6.10.2014 at about 7.40 a.m., some unknown person using the mobile phone of Arvind Kumar had informed on the mobile number of the son of the complainant i.e. Col.Rajinder Kumar that Neelam has died. Complainant lodged the statement stating that he had full belief that Arvind Kumar, husband has killed his daughter by strangulating her.

3. Petitioner is in custody since 6.10.2014. Investigation in the case having been completed, challan was presented, charges framed and the trial is under way.

4. Having heard learned counsel for the parties at length, this Court is of the considered view that the petitioner is entitled to the benefit of bail.

5. It has gone uncontroverted that on 6.10.2014, an

application was moved by the police of Police Station City Kapurthala to conduct post mortem on the dead body of Neelam wife of present petitioner. SMO Incharge, Civil Hospital, Kapurthala constituted a Board of Doctors comprising of Dr.Tara Singh, Medical Officer, Civil Hospital, Kapurthala, Dr.Atul Rattan and Dr.Gurmeet Kaur to conduct the post mortem. As per opinion of the Board of Doctors, the cause of death was to be given after receipt of reports of Chemical Examiner and Pathologist, yet an observation was made that death due to constriction of neck could not be ruled out. Upon receipt of report from the Department of Pathology, Amritsar and report of the Chemical Examiner, supplementary report of cause of death was given by the Board of Doctors and it was opined that cause of death was asphyxia due to strangulation. At this stage, it would be pertinent to advert to the deposition of Dr.Tara Singh, Medical Officer, Civil Hospital, Kapurthala, PW1 before the trial Court at Annexure P11. In his cross-examination, PW1 has clearly stated that there were no injuries on the body of deceased Neelam which would be indicative of any violence or resistance. He further stated that neither was there any bleeding from the mouth or nose nor was there any fracture of hyoid bone, thyroid bone and cartilages. The relevant extract from the deposition of PW1 in cross-examination would read as under:

".....It is correct that the presence of ligature mark above the thyroid cartilage, no fracture of the bone underneath, no mark of injury on the body, absence of skin tissue in the nails of the deceased, closed mouth

and eyes as well as absence of petechial haemorrhage in the eyes and conjunctiva are found when death is caused due to hanging. In the case in hand possibility of death due to hanging cannot be ruled out. It is correct that when a running noose is used for hanging then due to sudden weight of body the ligature mark takes the horizontal shape on the neck."

6. Suffice it to observe that the opinion on cause of death appears to be ambivalent and not conclusive.

7. Even as per statement of the complainant i.e. father of the deceased and based upon which the FIR was registered, there is no allegation of any demand of dowry at the time of marriage or during the 14 years, during which the matrimonial alliance subsisted. Offence under Section 498-A of the Indian Penal Code has not been cited in the present case. Prima facie, there seems to be some weight in the contention raised by learned counsel for the petitioner that the allegation as regards the demand of ₹2 lacs for purchase of a big car just prior to the death of deceased is to create a link and motive with the cause of death and demand of dowry.

8. It is not even the case made out on behalf of the State or by learned counsel appearing for the complainant that the petitioner if granted benefit of bail, would be in a position to hamper the course of trial. Learned State counsel informs that complainant has already deposed before the trial Court and he has been cross-examined by the defence.

9. Petitioner has been in custody since 6.10.2014. In an

overview of the matter, in the light of the observations made hereinabove and keeping in view the length of incarceration already suffered by him, the petitioner is held entitled to the benefit of regular bail.

10. Petitioner be enlarged on bail subject to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Kapurthala.

11. It is, however, clarified that the observations made in this order are confined only as regards consideration of the prayer of the petitioner for grant of bail and would have no bearing whatsoever on the merits of the case.

January 22, 2016
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether referred to Reporter? (Yes/No)