

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

**Crl. Misc. No.M-19457 of 2017 (O&M)
Date of Decision: June 02, 2017.**

Harbir

.....PETITIONER(s).

VERSUS

State of Haryana

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Keshav Pratap Singh, Advocate
for the petitioner (s).

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.340 dated 09.06.2015 registered for the offences punishable under Section 302 of Indian Penal Code (for short-IPC), at Police Station Hodal, District Palwal.

Heard.

Notice of motion.

On asking of the court, Mr. Tanuj Sharma, AAG, Haryana, who is present in the Court accepts notice and submits that intimation by Registry informing of fixation of the petition has already been received and record of the case is available with him.

Petitioner, after dismissal of his petition seeking pre-arrest bail, filed special leave to appeal (Crl.) No.3775/2017 and Hon'ble Apex Court while dismissing the same, passed the order as follows:-

“.....

However, there shall be stay of arrest of the petitioner for a period of four weeks from today. In the meantime, the petitioner may apply for regular bail before appropriate Court which shall be decided, as expeditiously as possible, on its own merits in accordance with law.”

In view of the protection allowed to the petitioner, he neither surrendered before investigating agency, nor is in custody. He moved application seeking regular bail before Additional Sessions Judge, Palwal, which was dismissed. Vide instant petition, he has sought regular bail in case bearing FIR No.340 dated 09.06.2015 registered for offence punishable under Section 302 IPC. Learned counsel for the petitioner has submitted that today is last day (i.e. 28th day) of four weeks protection from arrest as provided by Apex Court, as such, petitioner has not surrendered before police.

Brief Facts:

A DDR No.9 dated 07.11.2013 was registered on the statement of Balvir Singh son of Keshri, wherein he reported that on 06.11.2013 at about 8.30 P.M., his son had left to irrigate field on his motorcycle 'Platina' bearing registration No.HR-50-C-5230. He was found dead at a distance from village Sevali and his dead body was lying in field. The matter was reported to the police. Nephew of complainant namely Suresh son of Raghubir had informed the complainant that on his mobile No.9050052503, petitioner Harbir had made a call from his mobile No.8059260032 to inquire the location of Satish and he had apprised him that Satish is at the shop of Sher Singh son of Chander. After some time, Harbir called him again and

told that he had traced Satish. At about 9.00 P.M., Satish made a call to

Suresh and told that he had a dispute and when Suresh inquired about his location, the telephone got disconnected and he could not contact him again. Thereafter, on inquiring from home, he was apprised that no dispute had taken place and that Satish had gone with Harbir. After recording DDR, police did not register any FIR. In postmortem of Satish, injuries were found on his body. Viscera was sent to FSL, Madhuban and heart to PGIMS, Rohtak for examination.

After receiving FSL and PGIMS reports, opinion of the doctor was taken, wherein he stated that the death of the deceased was due to shock and hemorrhage as a result of injuries sustained and described in PMR. On receipt of this report, police recorded FIR on 09.06.2015.

Learned counsel for the petitioner has argued that the petitioner is not named in the FIR and there is no evidence to involve him with the murder of Satish. It is also doubtful that Satish was murdered as in the FSL report, he was found under the influence of liquor and it appears to be a case of accidental death.

Learned State counsel has argued that the police has collected circumstantial evidence which nail the petitioner as the person for murder of Satish. His mobile location proves that he was with Satish. He had also inquired location of Satish before murder from Suresh. The petitioner has not been arrested in the case so far. His anticipatory bail was dismissed by this Court with the observation in para 5 as follows:-

“5. It is a case of blind murder. I agree with learned State counsel that police has to scan all the circumstances during course of investigation appearing for the against the petitioner. Grant of anticipatory bail to the

petitioner will certainly hamper the fair investigation. The police is not after the petitioner and has not arrested him so far even after more than three years of the incident. Mobile location of the petitioner at the time of occurrence is one of the circumstance which goes against him.”

He has further argued that the above and other observation of this Court that custodial interrogation of petitioner is required were affirmed by the Hon'ble Apex Court, while dismissing his petition. Though the petitioner has sought regular bail as he has been given protection from arrest of four weeks, the police has yet to arrest him and further investigate the case. Grant of bail to petitioner will hamper investigation and will allow opportunity to him to prevail upon prosecution witnesses.

On noticing the peculiar facts of this case, I find that though technically this is an application seeking regular bail but virtually petitioner is seeking bail before his arrested by the police after dismissal of his pre-arrest bail application by this Court and also by Hon'ble Apex Court. Even during the period of four weeks allowed to him by Apex Court, he has not surrendered before the police to facilitate investigation of this case. There is prima facie indication of involvement of petitioner as deceased was last in his company. While disposing of his application seeking pre-arrest bail (CRM-M-11603-2014), I have observed that police has to scan all the circumstances during course of investigation, for which custodial interrogation of petitioner is required. Grant of bail to the petitioner at this stage will not only hamper the police investigation but will give opportunity to the petitioner to influence the evidence against him.

Conduct of investigating agency is also not above board in this

case. It initially did not take any action in the matter for about 18 months and then after registration of FIR kept the case pending for another about two years. It is quite unfortunate conduct of investigating agency, which shatter the public confidence.

Keeping in view the above facts and gravity of the offence, I find no reason to extend the benefit of regular bail to the petitioner. This bail application is dismissed.

(SURINDER GUPTA)
JUDGE

June 02, 2017
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***