

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

209

CRM-M-9519 of 2017

Date of Decision: March 27, 2017

Ashok Kumar @ Kalia

....Petitioner

vs.

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Tapan Kumar Yadav, Advocate
for the petitioner.

Mr. C.S. Bakshi, Addl. A.G. Haryana.

TEJINDER SINGH DHINDSA, J. (Oral)

This order shall dispose of the present petition filed under Section 439 Cr.P.C. seeking the benefit of regular bail to the petitioner in case F.I.R. No.134 dated 02.08.2015 under sections 147, 148, 364, 452, 302, 201 IPC, registered at Police Station Ateli, District Mahendergarh.

F.I.R. was registered on the statement of Subhash Chand and who stated that on 01.08.2015, he was present at his house along with his son-Ashok (since deceased) and daughter-in-law namely Nirma. It was alleged that at about 8.30 P.M. Omakant, Harvinder, Billu, Birender, Dev and five-six other boys, whom he could not identify, came in a Scorpio vehicle and entered the house. An attempt was made to abduct the

daughter-in-law and while efforts were being made to save her, the son of the complainant was put in the vehicle forcibly and abducted.

Initially, F.I.R. was registered under Section 147, 148, 364 and 452 IPC.

The offence under Section 302 IPC was added, when the dead body of Ashok i.e. son of the complainant, was found on 03.08.2015.

It so transpires that during the course of investigation, Omakant who had been specifically named by the complainant was arrested and he suffered a disclosure statement on 01.09.2015 and in which he confessed to having abducted Ashok (since deceased) and having assaulted him by giving danda blows along with certain other co-accused. It has gone uncontroverted that in such disclosure statement, the name of the present petitioner did not figure.

The petitioner is sought to be implicated on the second disclosure statement of Omakant recorded on the same very day i.e. 01.09.2015 and in which it is alleged that the petitioner was also present along with other co-accused while inflicting danda blows.

The petitioner has been in custody since 23.09.2015.

Name of the petitioner did not figure in the initial version of the complainant and also first disclosure statement of

Omakant.

The evidentiary value of the second disclosure statement of Omakant in which name of the petitioner figured would be an aspect to be dealt with by the trial Court.

Even though, both the disclosure statements of Omakant are with regard to inflicting danda blows on the person of the deceased yet in the Postmortem Report that has been placed on record at Annexure P-3, no injuries have been noticed on the body. As regards the opinion of cause of death, the Board of Doctors has conducted the Postmortem Report, have opined that the same would be given after reports from FSL Madhuban and PGI Chandigarh are received.

Learned State counsel would concede that as on date, such reports have not seen the light of the day.

Even the trial in the case has not made much progress.

Learned State counsel upon instructions from ASI Ved Parkash apprises the Court that out of 28 prosecution witnesses only 4 have been examined till date.

The trial, as such, is at the very initial stage and would take time to conclude.

In the totality of circumstances, the issue as to whether offence under Section 302 IPC has made out or not against the present petitioner is a moot question.

In view of the above discussion and keeping in view the length of incarceration already suffered by the petitioner, present petition is allowed. Petitioner be enlarged on bail subject to satisfaction of Trial Court/Duty Magistrate, Narnaul.

Petition disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

27.03.2017

anju rani

Whether speaking/reasoned : ***Yes***
Whether reportable ***:*** ***Yes***