

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

**CRM-M No.20602 of 2018
Decided on: 04.07.2018**

Kinneer Rupali

....Petitioner

Versus

State of U.T., Chandigarh

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Karan Vir Nanda, Advocate
for the petitioner.

Mr. Gautam Dutt, APP, U.T., Chandigarh.

ARVIND SINGH SANGWAN, J. (Oral)

The petitioner prays for grant of regular bail under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.339 dated 17.11.2017, for offence punishable under Sections 147, 148, 332, 353, 302 and 506 of the Indian Penal Code (in short 'IPC'), registered at Police Station West Sector 11, U.T., Chandigarh.

Counsel for the petitioner has submitted that the petitioner is in judicial lock up since 18.11.2017 and the investigation is complete and he is no more required for any further investigation. It is further submitted that there is no direct allegation against the petitioner except that when the main accused Atul had caused fatal injuries to deceased Harvinder Singh, the petitioner and some other kinnners had come at the spot and had also caused the injuries. It is further submitted that the main accused Atul has already been granted the concession of regular bail after considering the opinion given by the Board of Doctors regarding the cause of death. The operative part of the order dated

25.04.2018 passed in CRM-M No.16105 of 2018 is reproduced as under:-

“Counsel representing the petitioner adverts to the opinion recorded by a Board of Doctors as regards cause of death and which was in the following terms:

“The cause of death in our opinion chronic ischemic heart disease with pulmonary edema which is natural cause of death.”

Counsel has even referred to the document placed on record at Annexure P-3 i.e. a communication from the Investigating Officer, Police Station Sector-11, Chandigarh and addressed to the Board of Doctors, Government Hospital, Sector-16, Chandigarh, wherein a second/final opinion on the cause of death was sought. In response thereto, the following opinion was furnished:

“In the absence of any external injury on the body of deceased opinion regarding exaggeration of preexisting cardiac disease (chronic ischemic heart disease with pulmonary edema) due to fist blow/kicked to the deceased cannot be given. However, the above possibility of exaggeration of the preexisting cardiac disease due to altercation/heated arguments/trembling can not be ruled out.

*Sd/-
2.2.18*

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2.2.18”*

Apparently, it is on account of such opinion having been recorded that challan was presented by the Investigating Agency not for offence under Section 302 IPC but under Section 304 IPC.

During the course of arguments, learned counsel representing U.T. Chandigarh would concede that there were no external injury marks on the person of the deceased.

Counsel for the petitioner has even made an attempt to create a dent in the prosecution version by submitting that even though complainant/S.D.O. Arvind Yadav had alleged that he had been given repeated fist and slap

blows with an intention to kill, yet his medical examination had not even been conducted. Even such assertion made by counsel has not met with any rebuttal.

Challan in the present case has been presented.

Trial is at the very initial stage and would take time to conclude.

In view of the facts and circumstances noticed herein above and coupled with the length of incarceration already suffered by the petitioner, he is held entitled to the benefit of bail.

Petitioner be enlarged on bail subject to satisfaction of trial Court/Duty Magistrate, concerned.

Disposed of.”

Counsel for the petitioner has further submitted that one more person i.e. Malayika Mahant @ Kineer Malaika has also been granted the concession of anticipatory bail vide order dated 04.05.2018 passed in CRM-M No.17667 of 2018.

Counsel for the petitioner has further argued that even Kinnar Sonam Mahant has also been granted the concession of interim anticipatory bail vide order dated 14.06.2018 passed in CRM-M No.25962 of 2018.

Counsel for the State has filed the Custody Certificate today in the Court and as per the Custody Certificate, the petitioner is in judicial lock up for the last 07 months and 16 days and he is not involved in any other case.

Without commenting anything on merits of the case and considering the fact that the main accused namely Atul has already been granted the concession of regular bail on the basis of the opinion given by Board of Doctors; two of the co-accused of the petitioner have

already been granted the concession of anticipatory bail and also in view of the fact that the petitioner is no more required for any further custodial interrogation and conclusion of the trial is likely to take some time, this petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail, if the petitioner is found involved misusing the concession of bail, in any manner.

04.07.2018
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No