

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

Criminal Misc. No. M- 22936 of 2017 (O&M)

Date of decision : March 15, 2018

Chamkaur Singh

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ankush Singla, Advocate
for the petitioner.

Ms. Seena Mand, DAG, Punjab.

Mr. Lakhwinder Singh, Advocate for
Mr. Mohd. Yousaf, Advocate
for the complainant.

LISA GILL, J.

This the petitioner's second petition for bail pending trial in FIR No. 111 dated 13.11.2013 under Sections 302, 34 IPC (Sections 376, 201, 176, 120B IPC added later) registered at Police Station Barnala, District Barnala.

The petitioner's first petition i.e. CRM-M-14833 of 2015 was dismissed by this Court on 22.01.2015 while observing that the petitioner was nominated as the main culprit with the allegation that he had kidnapped, raped and murdered the deceased.

As per the FIR registered on the statement of the complainant i.e. father of the deceased, it is mentioned that the complainant's daughter (deceased) was pursuing a Nursing Course at Guru Nanak Nursing Home, Barnala. She went to the Nursing Home as usual at 8.00 a.m. on 12.11.2013.

She did not return till 5.00 p.m.. They tried to contact her on her mobile

number but it was found to be switched off after 5.00 p.m. They searched for her but in vain. They were woken up in the intervening night of 12/13.11.2013 by the noise of their dog barking. They opened the door of the house and found the complainant's daughter lying unconscious near the gate. Dr. Balour Singh was called. The police was informed and the complainant's daughter taken to Civil Hospital, Barnala. She was declared dead. It is stated that blue marks on her neck and on the right side of the abdomen were detected and some fluid was coming out from her mouth and nose. It is further stated that the dead body of the complainant's daughter was thrown in front of their house by some unknown persons after murdering her. FIR under Sections 302, 34 IPC was registered on the statement.

A supplementary statement was suffered by the complainant on the next day i.e. 14.11.2013 stating that due to tension, he forgot to record that the present petitioner was inducing his daughter to get married to him. She was in love in with him and wanted to marry him. However, the petitioner being married, with a motive to get rid of her in connivance with Sukhvir Singh @ Kaka and Paramvir Singh @ Phana murdered her by giving some intoxicant or some poisonous medicine. Thereafter, offences under Section 376, 201, 176, 120B IPC were added. The petitioner was arrested on 16.11.2013.

Learned counsel for the petitioner vehemently argues that the entire case is based on circumstantial evidence. The petitioner has been falsely implicated merely on a suspicion harboured by the complainant and his family of some relations which his daughter may have had with the petitioner. In fact, even the theory of honour killing cannot be ruled out in

the present case. It is contended that *Bhabhi* (brother's wife) of the deceased (PW9) has stated in her testimony before the learned trial Court that her sister-in-law (deceased) disclosed to her in the morning of 12.11.2013 that she (deceased) was in a physical relationship with the petitioner, who would marry her. PW9 further stated that she later came to know that some poisonous substance had been given to her sister-in-law, who was killed by the petitioner alongwith two co-accused and her dead body was thrown in front of their house.

Learned counsel for the petitioner submits that it is highly improbable that in case, this fact was in the knowledge of PW9, this fact would not have been immediately revealed to the police at the time of lodging of the FIR. Reliance is also placed by the prosecution on the statement of PW4 Darshan Singh son of Hardial Singh, who is the real maternal uncle (Mama) of the deceased to project that the deceased was last seen in the company of the petitioner on 12.11.2013 at 2/2.30 p.m. It is alleged that this statement was recorded much later on 15.11.2013 and not at the outset. Moreover, the allegations of the commission of rape, it is vehemently argued, are incorrect as the report of the Chemical Examiner (Annexure P-3) specifically mentions that no demonstrable semen was detected on the exhibits (lifted from the deceased) sent for examination. The allegations of poison being administered to the deceased is also negated by the report of the Chemical Examiner (Annexure P-4) wherein no poison was detected. It is further contended that as per report dated 04.07.2017, received subsequent to the dismissal of the petitioner's first bail petition, it is specifically mentioned that the exact cause of death cannot be ascertained in this case.

Learned counsel for the petitioner vehemently argues that the

petitioner has been in custody since 16.11.2013. Eight (08) prosecution witnesses are yet to be examined. All the material witnesses have since testified before the learned trial Court. The petitioner is not involved in any other criminal case. He undertakes to face the proceedings and not contact the complainant, his family or any of the witnesses. He undertakes not to go abroad during the pendency of this trial. It is, thus, prayed that this petition be allowed.

I have heard learned counsel for the parties.

Learned counsel for the complainant as well as the State have opposed this petition. However, it cannot be denied that the prosecution case is based upon circumstantial evidence. The petitioner has been in custody since 16.11.2013. Learned counsel for the State, on instructions from ASI Makhan Singh, verifies that the petitioner is not involved in any other criminal case. The prosecution has relied upon the evidence of PW4 to contend that the deceased was last seen in the company of the petitioner and depends on the statement of PW9 to contend that the deceased was in a relationship with the petitioner and ultimately she was done to death by the petitioner in connivance with the other co-accused. It is not denied that both the co-accused are on bail pending trial. Needless to say the evidence on record shall be appreciated by the learned trial Court at the relevant stage. No opinion is being expressed upon the same.

There are no allegations on behalf of the State that petitioner is likely to abscond or that he is likely to dissuade the witnesses from deposing true facts in the Court, if released on bail.

No useful purpose shall be served by keeping the petitioner incarcerated any longer. Keeping in view the facts and circumstances noted above but without expressing any opinion on the merits of case, it is

considered just and expedient to allow this petition.

Consequently, the petitioner be released on bail pending trial subject to his furnishing requisite bail bonds and surety to the satisfaction of the learned trial Court.

It is reiterated that none of the observations made herein above are a reflection on the merits of the case and shall have no bearing on the trial.

It is, however, clarified that the petitioner shall not try to contact the complainant or any of her family members in any manner - directly or indirectly. Any such infraction on the part of the petitioner shall entail cancellation of his bail.

March 15, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No