

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

**CRM-M No.25962 of 2018 (O&M)
Decided on: 13.09.2018**

Kinnar Sonam Mahant

....Petitioner

Versus

State of U.T., Chandigarh

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

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

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

ARVIND SINGH SANGWAN, J. (Oral)

The petitioner prays for grant of anticipatory bail in FIR No.339 dated 17.11.2017 registered under Sections 147, 148, 332, 353, 302, 506 Indian Penal Code (in short 'IPC') (challan presented under Sections 147, 148, 332, 353, 304 and 506 IPC) at Police Station West Sector 11, Chandigarh.

The operative part of the order dated 14.06.2018, vide which interim anticipatory bail has been granted to the petitioner, is reproduced as under:-

“....Counsel for the petitioner has 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 kinnars 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*

*Sd/
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.

Notice of motion for 13.09.2018....”

Counsel for the petitioner has submitted that, in pursuance to the order dated 14.06.2018, the petitioner has already appeared before the Investigating Officer and has joined the investigation.

Counsel for the State has submitted that though, the petitioner has joined the investigation, however, he is still required for further investigation for submitting the report under Section 173 Cr.P.C.

In view of the above, this petition is disposed of and the interim bail granted to the petitioner vide order dated 14.06.2018 is made absolute subject to the conditions envisaged under Section 438(2) Cr.P.C.

The petitioner is directed to appear before the Investigating Officer on 21.09.2018 at 10:00 am or on any other date or time fixed by him.

(ARVIND SINGH SANGWAN)
JUDGE

13.09.2018
yakub

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