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

CRM-M-43608-2018

Date of decision:12.10.2018.

GURJANT SINGH

... Petitioner

versus

STATE OF PUNJAB

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr.K.D. Sachdeva, Advocate,
for the petitioner.

Mr. Surinder Pal Singh Tinna, Additional Advocate General,
Punjab.

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 438 Cr.P.C. is for grant of pre-arrest bail to the petitioner in case FIR No.81 dated 03.04.2017 registered under Sections 302, 34 IPC at Police Station Dera Bassi, District SAS Nagar (Mohali).

The aforesaid FIR was registered at the behest of Rakesh Kumar son of Gurmel Singh, resident of Mirpur, Police Station Dera Bassi, District SAS Nagar. As per the FIR, the complainant is working as Machine Operator at Focal Point, Plot No.B11. Elder brother of father of the complainant Gian Singh had one son, namely, Mukhtiar Singh, aged about 35 years. Gian Singh had already expired. Mukhtiar Singh was married with Mamtosh daughter of Murari Lal, resident of Mirpur, Police Station Dera Bassi, about 11 years ago. Mamtosh was not a lady of a good

condition with one Banti son of Raja Ram, resident of Mirpur and for this reason, the Panchayat had blackened their faces and garlanded them with shoes. About two months ago, Mamtosh had ran away with the accused Banti and due to this reason, Mukhtiar Singh used to remain depressed and to state that Banti often threatened to kill him. Therefore, Mukhtiar Singh used to sleep outside with the father of the complainant Gurmel Singh. On 13.03.2017, the complainant came to know that Mukhtiar Singh has died. When the complainant went inside to ascertain the reason of the death of Mukhtiar Singh, then Sagar (son of Mukhtiar Singh) told him (complainant) that Banti son of Raja Ram and another unknown person while placing a pillow on the mouth of his father have killed him by strangulation and threatened him that if he (Sagar) made a noise, then they will kill him also. The complainant also saw blood oozing out from the mouth of Mukhtiar Singh. The death of Mukhtiar Singh though seemed natural at that time and he did not want any legal action. Accordingly, police conducted investigation and submitted challan. During trial, the Court examined PW2-Sagar and he, while appearing before the Court, named the petitioner on the basis of which, petitioner has been summoned to face trial in the aforesaid case.

Learned counsel for the petitioner has argued that occurrence had taken place on 13.03.2017. The said Sagar in his statement under Section 161 Cr.P.C. dated 10.06.2017, had not named the petitioner as an accused. Similarly, he had not specifically named the petitioner in his statement under Section 164 Cr.P.C. dated 05.04.2017 also. The petitioner has been summoned in the case without there being any evidence against

serious issue. He has relied upon CRM-M-38054-2011 titled as Avtar Singh @ Taari and another Versus State of Punjab, CRM-M-21253-2015 titled as Mahavir and others Versus State of Haryana, CRM-M-10627-2017 titled as Rajesh Kumar Versus State of Punjab, CRM-M-36135-2011 titled as Kashmir Singh and others Versus State of Punjab and CRM-M-6552-2015 titled as Gaurav Patial Versus State of Punjab.

On the other hand, learned State counsel has argued that it is during the course of evidence of Sagar-PW2 and PW3-Jyoti daughter of late Gurmel Singh, both have named the petitioner, who was identified by Sagar.

I have heard learned counsel for the parties.

There is no denial of the fact that though in the initial FIR which was registered at the behest of Rakesh Kumar, Sagar had stated that Banti son of Raja Ram along with 'unknown person' while placing pillow on the mouth of his father Mukhtiar Singh had strangled him. So the presence of another person along with Banti is already mentioned. PW2 is an eyewitness who is about 14 years of age. He has thoroughly been examined by the court and he has specifically named the petitioner. The relevant extract of his statement reads as under:-

“PW-2 On SA. Sagar S/o Late Sh. Mukhtiar Singh, son of not known, age 14 years, student, resident of Village Mubarkpur.

I am resident of aforesaid address and is student of 7th class at present. On the intervening night of 12.03.17 & 13.03.17, I was sleeping on the double bed alongwith my father, brother and sisters. However, at night time, on

account of striking out of the leg of the occupant of the bed, I had woken up. Then I saw Bunty, to have pressed pillow on the face of my father while his brother Vinod was holding the legs of my father. However, my mother Mamtesh was standing near the door. As a result of pressing of the pillow my father had died. Then I had disclosed about this manner of causing of death of my father to my paternal aunt Jyoti. I had come to know the name of the person who was holding the legs of my father to be Vinod after 2-3 days of the occurrence.”

Thus the PW2-Sagar is an eyewitness to the occurrence wherein the accused have caused the death of Mukhtiar Singh, while pressing pillow on the face of deceased. His testimony seems natural as he is 7th class student, aged about 14 years.

The judgments so cited by learned counsel for the petitioner are not applicable to the facts and circumstances of present case.

No ground for grant of anticipatory bail to the petitioner is made out.

Dismissed.

It is made clear that the observations made hereinabove shall not be construed as an expression on the merits of the case and the trial court shall decide the case on the basis of available material.

(HARI PAL VERMA)
JUDGE

12.10.2018
sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.