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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-49913-2018 [O&M]

Date of Decision : September 06, 2019

Davinder Singh alias Gurjit Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Sumit Jain, Advocate,
for the petitioner.

Mr. Pawan Sharda, Senior DAG, Punjab,
for respondent-State.

Mr. N.S. Dandiwal, Advocate,
for the complainant.

SHEKHER DHAWAN, J.

Present petition under Section 439 of the Code of Criminal Procedure is for grant of regular bail to petitioner, Davinder Singh alias Gurjit Singh in case bearing FIR No. 75 dated 12.05.2018 under Sections 302, 328 and 34 IPC registered at Police Station District Ludhiana Rural.

2. In this case, originally the FIR was registered under Sections 302, 328 and 34 IPC and final report under Section 173 Cr.P.C. was filed under Sections 304-A, 328 and 34 IPC but, the charges have been framed under Sections 302 and 201 IPC by learned trial Court vide order dated 24.09.2018.

3. Facts relevant for the purpose of decision of the present petition; that complainant, Gurmeet Singh got recorded FIR that his son Jiwanjot Singh was studying in Government College, Ludhiana. On

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11.05.2018 at about 11.00 AM, Jiwanjot Singh left his house in car bearing registration No. PB-10DN-0609 that he was going to meet his grand parents at Paitala. On 12.05.2018, complainant came to know that dead body of Jiwanjot Singh was lying in the car on road near village Hissowal. An empty syringe was lying near his dead body and his pant was down upto his thighs. Complainant apprehended that his son had been killed by giving him some type of injection with the help of said syringe.

4. During investigation, the petitioner was nominated as the person who not only accompanied the deceased on 11.05.2018, but also as a person who murdered him and was arrested the petitioner on 15.5.2018.

5. Learned counsel for the petitioner contended that initially, final report was submitted under Sections 302, 328 and 201 IPC and on the basis of subsequent investigation, final report was prepared under Sections 304-A, 328 and 34 IPC on the basis of copies of Postmortem report of deceased Jiwanjot Singh, his Pathology Reports, statement of Raghbir Singh and record of admission of Jiwanjot in Drug Rehabilitation Centre, Annexures P/3 to P/6 respectively. As per the legal opinion given by District Attorney, no offence under Sections 302 and 201 IPC was made out against the petitioner. The said legal opinion (Annexure P/8) is as under:-

“.... From the report as well as from the documents attached, as per my opinion offence under Section 302/201 IPC has not been found committed but as Devinder Singh was negligent by not taking Jiwanjot Singh in his unconscious state to nearby hospital for medical treatment, therefore he has been found committed offence under Section 304-A/34 IPC and 21/27/61/85 N.D.P.S. Act. It is also recommended to name

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Balkaran Singh alias Balla son of Gurdev Singh caste Jat Sikh resident of Tibbi Sahib, Jaito, Sada Patti, Ward No. 3, P.S. Jaito as accused in the FIR and challan is required to be presented against him under Section 304-A/34 IPC and 21/27/61/85 N.D.P.S. Act in the Court....”

6. Accordingly, final report under Section 173 Cr.P.C. was presented before learned Magistrate and case was committed to the Court of Sessions on account of offence under Section 328 IPC being exclusively triable by the Court of Sessions. However, learned Court of Sessions framed charges under Section 302 and 201 IPC, but completely ignored the material evidence available on record.

7. Learned counsel for the petitioner further contended that deceased Jiwanjot Singh and petitioner were known to each other and were habitual drug addicts. More so, as per call records of cell nos. of the petitioner and deceased Jiwanjot Singh, it is established that the petitioner had been called on his cell number many times by Jiwanjot Singh to meet him and on meeting, they had consumed drugs in the car of Jiwanjot Singh.

8. Learned counsel for the petitioner further contended that the petitioner is in custody since 17.5.2018 and trial of the case still to take some more time and it shall be matter of trial whether the petitioner is liable for conviction for any offence under the Indian Penal Code muchless to say under Section 302 IPC in view of Postmortem report of deceased Jiwanjot Singh, his Pathology Reports, statement of Raghbir Singh and record of admission of Jiwanjot in Drug Rehabilitation Centre, Annexures P/3 to P/6 respectively. So, the petitioner be admitted to bail.

9. Learned State counsel as well as learned counsel for the complainant while opposing the bail application contended that learned Additional Sessions Judge in its detailed order dated 24.09.2018

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(Annexure P/9) had recorded observations that it is a case under Section 302 and 201 IPC and charges were ordered to be framed accordingly. No case is made out for release of the petitioner on bail at this stage.

10. Having considered the submissions that the petitioner is in custody since 17.5.2018; investigation having been done at different levels leading to different conclusions and Postmortem report of deceased Jiwanjot Singh, his Pathology Reports, statement of Raghbir Singh and record of admission of Jiwanjot in Drug Rehabilitation Centre, Annexures P/3 to P/6 respectively, it shall be matter of consideration by learned trial Judge during the course of trial whether any offence under the Indian Penal Code muchless under Section 302 IPC is made out. However, without expressing any opinion on the merits of the case, least that may not cause prejudice to either of the parties, but taking into consideration the fact that the petitioner is in custody in this case since 17.5.2018, investigation is already completed; charges have been framed by learned trial Judge and trial of this case still to take some more time, no purpose would be served by keeping the petitioner behind the bars.

11. Resultantly, the present petition stands allowed and petitioner, Davinder Singh alias Gurjit Singh is ordered to be released on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court /Chief Judicial Magistrate/Duty Magistrate concerned.

12. Any observation made herein above shall have no bearing on the merits of the case.

(SHEKHER DHAWAN)
JUDGE

September 06 , 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes