

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

CRM-M No.52354 of 2019 (O&M)
DATE OF DECISION : 9th DECEMBER, 2019

Kiran Kumar

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Chandan Singh Rana, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.194 dated 06.10.2019 registered under Section 306 IPC at Police Station Dehlon, District Ludhiana.

The allegations, giving rise to the FIR in the present case, have emerged from the statement of Amar Singh, who is the father of the deceased. It was stated in the said statement that the complainant and his deceased son were running a shop of hardware. On 05.10.2019 at about 10:30pm his son had gone on the scooty. Thereafter, attempt was made to call and contact him. On being contacted the deceased son has told him that he would be coming back very soon. However, when he did not come in time, the complainant again called him. But, thereafter, he was not answering the calls. On the next day the complainant got information that the scooty of his son was lying parked at a place near the house. At about 4.30pm the tenant of the complainant, who had gone to the roof of the house in order to take the clothes, saw the dead body of the deceased son of the complainant. On being informed, the complainant also went

there and found that his son-Balwinder Singh was lying there, and the intestine was coming out from his stomach and there was a hole in his T-shirt and vest, which the deceased was wearing at that time. Even the skin was torn. The country made pistol of .315 bore was lying near the body. Even a suicide note was recovered from the pocket of the T-shirt worn by him, which was written in Punjabi. It was written in the said suicide note that the family of the deceased purchased a plot from the present petitioner worth rupees on crore. The petitioner had taken money but neither he was getting the sale deed of the plot registered nor was he returning the money. Therefore the deceased was committing suicide.

Arguing the case, learned counsel for the petitioner submits that there is no document to show that the petitioner had sold any property to the deceased or taken any amount from him. It is further submitted that earlier also the complainant had registered an FIR against the present petitioner under Section 323, 325 & 341 IPC and allied Sections. However the enquiry was conducted in that case; and thereafter the police filed the cancellation report in that case. Hence, as a measure of harassment, the name of the petitioner has again been dragged in the FIR. It is further contended that even if the transaction of property is taken to be correct, the offence under Section 306 IPC is not made out; because the ingredients of the offence are not present, as such.

Of course, the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under

Cr.P.C; is that the Investigating Officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the Investigating Agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in some part of the country qua all the offences and under some special statutes qua some specified offences, this power is not available throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the *ex-facie* innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

Coming to the facts of the present case, although the counsel for the petitioner has submitted that the petitioner was not having any dealing with the deceased, as such, however, it is his own case, as pleaded before the court below, that the petitioner was having business dealing with family of the deceased. It is recorded by the court below that the petitioner himself had said that the business dealing was with the complainant, who is the father of the deceased. Hence, *prima facie*, it cannot be accepted that the petitioner had no dealing with the deceased or his family. Secondly, although the counsel for the petitioner has submitted that earlier also an FIR was got registered against the petitioner by the same complainant but same was cancelled after investigation, however, this argument also, is totally irrelevant. It is not even submitted that the subject matter of the said FIR was the business dealing involved

in the present case. That case pertains to causing alleged injuries to the complainant. Still further, although the counsel has submitted that the ingredients of the offence are not made out, however, the role of the petitioner and the extent of effect of the same upon the decision making of the deceased qua the suicide would be clear only after gathering the evidence and during the trial. Undoubtedly, the investigation of the case is at the preliminary stage. If at this stage, the petitioner is protected against his arrest, then the investigation by the police would be adversely effected.

In view of the above, this court does not find any mitigating circumstance in favour of the petitioner, showing his *ex-facie* innocence, vis-a-vis the allegations leveled against him. Accordingly, this court is not inclined to exercise the extraordinary power under Section 438 Cr.P.C. to grant the petitioner, the protection against his arrest.

Hence, finding no merit in the present petition the same is dismissed.

9th DECEMBER, 2019
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>