

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-25237 of 2020

Date of Decision: October 16, 2020

Mosim

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Vishwajeet Singh, Advocate for the petitioner

Mr. Munish Sharma, AAG Haryana

Mr. Rajesh Lamba, Advocate for the complainant

Sudhir Mittal, J.

The petitioner seeks grant of regular bail in case FIR No. 860 dated 11.11.2019 registered under Sections 302, 201, 34 IPC and Section 6 of POCSO Act, 2012 (Section 506 IPC added later on) at Police Station Nuh, District Nuh.

According to the complainant (father of the deceased), he last saw his son Shoban at around 10.30 p.m. on 31.10.2019. At that time he was sleeping in the house. He again woke up at around 1.00 a.m. and noticed that Shoban was missing. There was no response to a phone call made to him and on making a second call the phone was found switched off. At about 9.00 a.m. on 01.11.2019 some villagers informed him that Shoban has been killed and is hanging in the fodder house of Jameel son of Jumme Khan. The villagers had already called police and in its presence the body was brought down. An unnatural act appeared to have been committed and blood was found on his clothes. He had suspicion against nine persons including the petitioner.

Status report dated 13.10.2020 by way of affidavit of Sudhir Taneja, HPS, Deputy Superintendent of Police, HQ, Nuh has been placed on record.

According to this reply, autopsy was conducted on 02.11.2019. The report was sent

to a Board of Doctors for opinion and the same was obtained vide report dated 08.11.2019 (Annexure R-1). According to this report, injury Nos. 3 and 4 were found to be recent in nature and the blood found at anal region could be due to sexual assault or penetration of any foreign object. Call detail records of the petitioner and the deceased have been obtained and a copy thereof is annexed as Annexure R-2. This shows that two calls were made by the petitioner to the deceased on 31.10.2019 at 10.43 p.m. and 10.49 p.m. and the duration of the calls was 153 and 59 seconds respectively. Investigation conducted till date does not show that the petitioner committed a murder. The other eight accused mentioned in the complaint have been found innocent. The investigation is still ongoing and a polygraphic test may be conducted in future.

Learned counsel for the petitioner has argued that the petitioner has been in custody since 12.11.2019. A long period has elapsed and there is no other criminal case pending against the petitioner. This is a case of false implication. The statement of the grand father of the deceased was recorded on 01.11.2019 itself and a copy thereof is on record as Annexure P-2. Nobody was blamed at that time. Subsequently, father of the deceased got his statement recorded on 10.11.2019 blaming the petitioner and eight other persons. The motivation behind the complaint is that the family of the petitioner has got two other FIRs registered against the complainant and his family members, details of which are given in the petition. The postmortem report shows that some healed scars were found in the anal area and this is because the deceased was suffering from piles. In the status report filed by the police it has been clearly submitted that this is not a case of murder. Thus, in view of the fact that the petitioner has been in custody for almost one year and false implication can not be ruled out, the petitioner deserves to be granted regular bail.

the prayer for bail. It has been submitted that opinion of the medical board as well as the call detail record clearly establish that the possibility of sexual assault can not be ruled out and that the petitioner was the last person who spoke to the deceased on the night intervening 31.10.2019 and 01.11.2019. Initially, the grand father of the deceased had stated that they did not doubt any one but had reserved the right of the family to make further complaints upon collection of more information. This is evident from the statement dated 01.11.2019 (Annexure P-2). After medical opinion was obtained on 08.11.2019 and the complainant collected further information from his sources, he got his statement recorded on 10.11.2019. Thus, the delay has been explained. The police has not come across any evidence to suggest that the deceased was suffering from piles. The petitioner is urging so and he could have submitted proof thereof. He has failed to do so and, thus, the argument is figment of his imagination. Section 6 of the POCSO Act, 2012 is involved for which maximum punishment is imprisonment for life. Thus, the petitioner does not deserve to be granted bail.

The first and foremost issue raised by counsel for the petitioner is regarding the delay in registration of the FIR as well as the fact that the grand father of the deceased had got his statement recorded on 01.11.2019 itself that the family did not suspect anyone. The statement dated 01.11.2019 is on record as Annexure P-2 and a perusal thereof shows that at the stage of getting statement recorded the family did not suspect anybody. The statement further goes to say that further proceedings will be conducted after collecting more evidence. Learned counsel for the petitioner is misreading the statement to suit his client. After more evidence came to light in the form of call detail record (Annexure R-2) and opinion of the medical board (Annexure R-1) it became clearer to the family that it was a case of sexual assault with a minor. The medical opinion was obtained on

Thus, the delay has been explained.

The next argument raised by counsel for the petitioner is that abrasions in the anal area were on account of the fact that the deceased was suffering from piles. However, the investigating agency has not come across any such evidence. The petitioner has also not placed any material on record to substantiate his argument. On the contrary the medical board has opined that sexual assault can not be ruled out and, thus, at this stage it is difficult to return a finding that the deceased was not subjected to sexual assault.

The next argument raised is that the status report filed by the police itself shows that the petitioner is not guilty of murder. Thus, he deserves to be granted regular bail in view of the custody period already undergone. It is true that according to the status report filed on behalf of the State of Haryana the petitioner may not be guilty of murder, however, he is accused of aggravated sexual assault on a minor and the maximum punishment for which is imprisonment for life. Thus, custody period of the petitioner does not entitle him for grant of bail at this stage.

The argument of false implication on account of rivalry between the families due to registration of two other FIRs is a double edged sword. It may give motive to the complainant side to falsely implicate the petitioner. It may also give motive to the petitioner to act against the deceased. The issue would be put to rest only after the trial and I do not consider it appropriate to opine thereupon at the stage of bail.

Thus, I do not find any reason to grant regular bail to the petitioner.
The petition is dismissed.

October 16, 2020

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No