

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

219

**CRM-M-26289-2020
Date of decision: 18.09.2020**

Kamlesh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Sanchit Punia, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana
for the respondent-State.

Mr. Kuldeep Sheoran, Advocate
for the complainant.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for grant of regular bail in case FIR No.169 dated 02.04.2020 registered under Sections 302 and 201 read with Section 34 of the Indian Penal Code, 1860 (for short, "the IPC") at Police Station Barwala,. Hisar.

The above said FIR was registered on written complaint submitted by Udaivir Singh to SHO Police Station, Barwala, Hisar. In his complaint Udaivir Singh alleged that his brother Naresh Kumar died on the intervening night of 13/14.03.2020. The same was projected as a case of death by hanging. As the circumstances of his death were not clear the respectables of the village got the dead body cremated without

post-mortem examination. Subsequently, due to suspicion against Suman, wife of deceased Naresh Kumar, the village residents investigated the matter on their own. On interrogation co-accused Gurmit confessed his guilt in the village panchayat and disclosed that he, Suman and Kamlesh, sister-in-law of the deceased (the petitioner) murdered Naresh Kumar and hanged his dead body from the ceiling. Pursuant to registration of the above said FIR, the police investigated the case. The police arrested the above said persons and recovered scissor and rope used in commission of the offence from the house of the deceased at the instance of Suman wife of the deceased. On completion of investigation the police charge-sheeted the petitioner along with her co-accused Gurmit and Suman to face trial under Sections 302 and 201 read with Section 34 of the IPC.

The petitioner, who is in custody since her arrest on 22.04.2020, has filed the present petition for grant of regular bail.

The petition has been opposed by learned State counsel and learned counsel for the complainant. However, no reply has been filed by the respondent-State and the complainant.

I have heard learned counsel for the petitioner, learned State counsel and learned counsel for the complainant and gone through the relevant record.

Learned counsel for the petitioner has argued that the dead body of the deceased was found hanging and was cremated without getting post-mortem examination conducted. Naresh Kumar died on the intervening night of 13/14.03.2020 but the FIR was registered on 02.04.2020 with undue and unreasonable delay of 19 days. Statement

of Aryan was also recorded with unreasonable delay of 02 months and 20 days while statement of co-accused Gurmit was recorded after more than a month on 19.04.2020. Co-accused Gurmit is alleged to have confessed that he along with Suman and the petitioner murdered Naresh Kumar and hanged his dead body but in his statement under Section 164 of the Cr.P.C. he stated that Naresh Kumar was already dead before he reached house of the deceased and his dead body was hanged. The petitioner was living separate and had no motive to murder the deceased. There is no direct or circumstantial evidence conclusively incriminating the petitioner as to her involvement in murder of the deceased except the confession of co-accused Gurmit which is not corroborated by any cogent evidence. On completion of investigation report under Section 173 (2) of the Cr.P.C. has already been filed. The trial is likely to take long time and no useful purpose will be served by further detention of the petitioner in custody during trial. Therefore, the petitioner may be granted regular bail.

On the other hand, learned State counsel and learned counsel for the complainant have argued that the petitioner along with her co-accused Gurmit and Suman manually strangled deceased and hanged his body to project the incident as a case of suicide. There is video recording of the confessional statement of co-accused Gurmit. Statement of co-accused Gurmit was also recorded under Section 164 of the Cr.P.C. In view of the nature of accusation and gravity of the offence committed, the petitioner does not deserve grant of regular bail. Therefore, the petition may be dismissed.

Admittedly, no post-mortem examination was conducted

on the body of the deceased. Co-accused Gurmit has allegedly made extra judicial confession that he along with Suman wife of the deceased and the petitioner murdered Naresh and hanged his dead body but he partly resiled by stating in his statement under Section 164 of the Cr.P.C. that Naresh was already dead before he reached his house. Case involves debatable questions as to admissibility and evidentiary value of said confessional statement of co-accused Gurmit against the petitioner. In view of the facts and circumstances of the case, nature of accusation and evidence against the petitioner and the fact that the trial is likely to take long time due to restrictions imposed to prevent the spread of Covid-19 and also that the presence of the petitioner during trial can be secured otherwise also than only by her detention in custody which not being punitive will not serve any useful purpose, but without commenting on the merits of the case, I am inclined to extend the concession of regular bail to the petitioner.

In view of the above, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

18.09.2020

Vinay

**(ARUN KUMAR TYAGI)
JUDGE**

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