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

CRM-M-34664-2020 (O&M)

Date of Decision: 26.11.2020

Rajesh @ Kalia

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Aman Pal, Advocate,
for the petitioner.

Mr. Anmol Malik, DAG, Haryana,
for the respondent-State.

Mr. Vivek Khatri, Advocate,
for the complainant.

SUDIP AHLUWALIA, J. (ORAL)

CRM-29063-2020

Applicant-petitioner is permitted to place on record copy of the
Post Mortem Report and FSL Report as Annexures P-8 & P-9, respectively.

Application stands disposed off.

CRM-M-34664-2020

This is a petition for regular bail filed under Section 439
Cr.P.C. on behalf of the petitioner in case FIR No.140 dated 03.05.2018,
under Sections 147, 149 and 302 of the IPC, registered at Police Station
Matlauda, District Panipat.

[2]. The petitioner has remained in detention in the present case for
more than 2½ years since 04.05.2018.

[3]. Ld. Counsel for the petitioner has drawn attention of the Court to the fact that three versions of the alleged occurrence have transpired. In the FIR, the complainant had alleged that his father, who had gone to the Tailor's shop for stitching his *kurta-paijama* was caught hold of by the present petitioner on the instigation of one Sumer, after which his head was allegedly smashed on the *pakka* area outside the Tailor's shop resulting in his death, and two other brothers of the present petitioner, namely Parveen and Deepu, as also their father, namely, Antru were actually present at that time and had actively abetted the attack resulting in the death of the complainant's father.

[3]. However, on the very next date, the complainant made a supplementary statement in which he withdrew his allegations against the petitioner's two brothers, namely, Parveen and Deepu and also his father by saying that he learnt that these three persons named in the FIR had reached the spot after the occurrence had already taken place.

[4]. The third version which has transpired from the statement under Section 161 of the Cr.P.C. of a very material witness, namely, Karambir, who happens to be the owner of the Tailor shop, concerned, is that the petitioner after having taken bath had come out of the house of Kanwar Bhan had asked the deceased, who was standing in the Tailor's shop at that time as to whether his intoxication of liquor has dissolved, to which the deceased is stated to have been replied that it had dissolved, and asked the petitioner to go. But the petitioner thereafter pulled the deceased and there was scuffling between them during which foot of the deceased slipped into the drain located just outside the shop on account of which he fell down on the *pakka* surface which caused his death.

[5]. In this background, it is noteworthy that Sumer, the alleged instigator according to the FIR had been declared innocent by the Police during the investigation, but Challan against the petitioner was nevertheless submitted.

[6]. The complainant thereafter filed an application under Section 319 of the Cr.P.C. for also summoning the said Sumer to face trial as an accused, but the said application was dismissed by the Trial Court, after which he has preferred a Criminal Revision in this Court to challenge such dismissal, which revision is presently pending.

[7]. Ld. Counsel for the petitioner in compliance of the previous Order passed on 24.11.2020 has placed on record a copy of the Post Mortem Report of the victim (Annexure P-8) on perusal of which, it is seen that existence of certain abrasions were noted on the scapula, right elbow, right forearm and upper 1/3rd portion of the right leg, although death of the victim had occurred due to the blunt force trauma on his head.

[8]. In these circumstances, it cannot be said that the injuries abrasions seen on the victim's limbs, which essentially were only on one side, i.e., the right side of his body could not have been caused by fall due to slipping of foot on the edge of the drain near the Tailor's shop. At any rate even according to the FIR, the petitioner was carrying no weapon nor used any weapon in attacking the deceased victim which would therefore raise a doubt whether he actually had any premeditated intention to kill the victim, or whether the occurrence took place on the spur of the moment after the petitioner had needlessly provoked the deceased by asking him whether the effect of his liquor intoxication had got dissolved or not.

[9]. In such circumstances, the long detention undergone by the petitioner since 04.05.2018 becomes a vital factor in deciding the bail petition since it transpires that a substantial time was consumed by the Ld. Trial Court in deciding the complainant's application under Section 319 of the Cr.P.C. which was ultimately dismissed. The complainant in any case has already been examined in full. But 25 other witnesses cited in the Challan still remain to be examined.

[10]. As such, without commenting any further on the merits of the present case as a whole and the fact that the trial is likely to take its own considerable time due to ongoing Covid-19 Pandemic, the prayer of the petitioner for regular bail is allowed and he is ordered to be released on bail subject to appropriate terms and conditions to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

[11]. Disposed off.

26.11.2020

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No