

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

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**CRM-M-34609-2020
Date of decision: 04.11.2020**

Suman alias Nirmal

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Raman Chawla, 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, District 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 (the petitioner), 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 (the petitioner) and Kamlesh, sister-in-law of the deceased 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 (the petitioner) wife of the deceased. On completion of investigation the police charge-sheeted the petitioner along with her co-accused Gurmit and Kamlesh to face trial under Sections 302 and 201 read with Section 34 of the IPC.

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

Pursuant to supply of advance copy, learned State counsel has appeared and opposed the petition.

The complainant has appeared through Mr. Kuldeep Sheoran, Advocate and opposed the petition. He undertakes to file his power of attorney in the registry.

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 the petitioner and co-accused Kamlesh 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. 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. Co-accused Kamlesh has been granted regular bail by this Court vide order dated 18.09.2020. The trial is likely to take long time and no useful purpose will be served by further detention of the petitioner in custody. 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 is the wife of the deceased and is the main accused. The petitioner along with her co-accused Gurmit and Kamlesh 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 the petitioner who is wife of the deceased and co-accused Kamlesh 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. Apart from the above said confessional statement prima facie there is no other cogent incriminating evidence as to cause of death of the deceased and involvement of the petitioner in the crime.

In view of the facts and circumstances of the case, nature of accusation and evidence against the petitioner, the fact that similarly placed co-accused Kamlesh has already been granted regular bail by this Court vide order dated 18.09.2020, 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 further detention of the petitioner in custody 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.

04.11.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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