

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

CRM M-36738 of 2020 (O&M)
Date of Decision: November 16, 2020

Ajay KumarPetitioner
Versus
State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Ms. Sushma Chopra Advocate
for the petitioner.

Mr. J.S. Ghumman, DAG, Punjab.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through video-conferencing on account of outbreak of pandemic COVID-19.

Petitioner Ajay Kumar who is in custody has moved this second regular bail application under Section 439 of Cr.P.C. in FIR No. 0028 dated 21.07.2018 under Sections 304-B and 34 IPC (Section 302 of IPC added subsequently) Police Station Khui Khera, District Fazilka the first one having been dismissed as withdrawn on 09.09.2019 at that stage.

The brief allegations against the petitioner have been levelled by Kalu Ram father-in-law of the petitioner. In his allegations, the complainant states that his daughter Samestha Kumari (now deceased) was married with petitioner about 03 years prior to this occurrence which took place in July, 2018. Out of this wedlock, the couple gave birth to a daughter aged around 1 year and 03 months. There are allegations that the petitioner used to ask for money from his daughter and he had given Rs. 10,000/- on 3 /4 occasions. It is alleged that on 20.07.2018, petitioner/accused alongwith brother co-accused Vijay Kumar came to him and demanded Rs.1,00,000/- and when he refused they went back. It is around 3 /4 p.m., the same day, deceased gave a call to the complainant who did not talk about any such skirmish between the husband and the wife and talked to the complainant in a good mood. However, on 21.07.2018 in the early morning he received a call intimating that his daughter had been admitted to Medical College, Faridkot and, thereafter, the family rushed to the college and the deceased told them that she was having pain in the stomach and, thereafter, died.

Ms. Sushma Chopra, learned counsel for the petitioner *inter alia* contends that bare perusal of the allegations no where specifies any role in the commission of the offence to

the petitioner and merely because of his being husband has been falsely implicated when it is own stand of the complainant that neither at the time of receiving mobile phone call the deceased daughter expressed any harassment nor when they met at the hospital on the day of her death and, therefore, submitted that it is subsequently a flimsy story chalked out.

Mr. J.S. Ghumman, DAG, Punjab, the learned State counsel does not displace the facts brought to the notice of the Court but has strongly opposed the bail on the grounds that there is a demand of money even one day prior to the occurrence and, therefore, in view of the offence disentitle him to any relief.

Going through the submissions, a bare perusal of the allegations did not spell out any case of harassment by the petitioner for demand of money and the allegations are mere vague and ambiguous. More so, even one day prior to the occurrence, the father accepts that there was no expression of any harassment to the daughter at the hands of the husband and demand of any money or goods. Even at the time when the complainant rushed to the hospital, the deceased did not disclose to him anything against the accused. Thus, a debatable issue arises over the cause of this incident as it is fairly conceded at the bar by the learned State counsel that neither

there is any dying declaration nor any such circumstance to establish reasons for this death nor there is any eye witness account.

Keeping in view such debatable issue the very question of applicability of offence under Sections 304-B/302 IPC is subject to trial. The accused is behind the bar for almost 02 years and 4 months and in view of the present pandemic COVID-19 situation, the trial is not likely to be concluded in the near future. Therefore, this Court deems it appropriate to grant the bail. Accordingly, the petitioner is ordered to be released on regular bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that anything observed herein shall not be construed as an expression on the merits of the case.

Disposed off.

November 16, 2020

amit rana

(FATEH DEEP SINGH)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No