

Sr.No.101

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

CRM-M-50353-2019(O&M)

Date of decision:05.02.2020

Gourav Data

... Petitioner(s)

versus

State of Haryana

... Respondent (s)

Coram: Hon'ble Mr. Justice Jasgurpreet Singh Puri

Present: Mr. Gurmandeep Singh Sullar, Advocate
for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

Mr. Sanjay Majithia, Sr. Advocate with
Mr. Inderjeet Singh, Advocate
for the complainant.

Jasgurpreet Singh Puri, J.(Oral)

This is a petition filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.707 dated 14.10.2019 under Section 3 of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as the 'SC & ST Act) and Section 9 of Prohibition of Employment as Manual Scavengers and their Rehabilitation Act (2013) (hereinafter referred to as the '2013 Act'), registered at Police Station Model Town Rewari, District Rewari, Haryana.

Learned counsel for the petitioner has argued that in the present case as per the allegations contained in the FIR, two persons namely, Ramjas who was Mechanic and other person, namely, Devender who was employee had entered into the septic tank of the hotel which was owned by the petitioner for the purpose of repairing of the submersible motor which was inserted inside the septic tank. Consequently, as per the allegations

contained in the FIR, they had died because of toxicity which was due to poisonous gas (Methane) and that they had drowned due to dirty water and ultimately died. Learned counsel for the petitioner has further argued that in the present case, as per the provisions of Section 9 of the 2013 Act there was no violation of any of the provisions of the Act because the tank was neither the sewage tank nor it was a sewer and therefore, provisions of the above stated Act do not apply at all. Learned counsel for the petitioner has submitted that provisions of Section 3 of the SC & ST Act would also not apply because bare perusal of the FIR itself shows that there is not even a single whisper with regard to any violation of any provision of Section 3 of the SC & ST Act. He has further argued that case under Section 304 IPC would not be made in the present case and has prayed for grant of pre-arrest bail in the present case. He has further submitted that one of the co-accused, namely, Manish Rawat who was the manager of the hotel has been granted regular bail by the learned Trial Court vide order dated 23.10.2019 (Annexure P-2).

Learned State counsel has put in appearance and has opposed the grant of anticipatory bail to the petitioner.

Mr. Sanjay Majithia, Sr. Advocate assisted by Mr. Inderjeet Singh, Advocate has put in appearance on behalf of the complainant - family of Ramjas and has also opposed the grant of pre-arrest bail to the petitioner.

The common argument raised by learned counsel for the complainant and learned State counsel is that in the present case it was a serious offence which was committed by the petitioner so far as the petitioner being the owner of the hotel had permitted the deceased to enter

into the septic tank of the hotel without taking any precautions which are mandated under the Statutory rules which have been framed under the provisions of 2013 Act. They have referred to the provision of Section 9 of Prohibition of Employment as Manual Scavengers and their Rehabilitation Act (2013) which have been framed in exercise of powers conferred under sub-sections (1) and (2) of Section 36 read with clause (a) of sub-section (1) of Section 37 of the 2013 Act. Reference has been made to Rule 3 of the above-stated rules which provides obligations of the employer who has to engage employees in the cleaning of sewer and septic tank. Relevant par of Rule 3 is reproduced as under:-

3.(1) No person shall be allowed to clean a sewer manually, with protective gear and safety devices under these rules except:-

(a) for the removal of concrete of FRP (Fire Reinforced Plastic) or damaged manhole door where mechanical equipment's cannot be put into operation.

(b) for inter-linking the newly laid sewer main with the existing sewer main, in case of sewer of size of more than 300 mm diameter.

(c) for removal of submersible pump sets fixed at the bottom of the suction wells.

(d) for the reconstruction of the manhole or rectification of the sewer main.

(e) Any circumstance, when it is

absolutely necessary to have manual sewage cleaning, after the CEO of the local authority has permitted to do so after recording in writing the specific valid reasons for allowing such cleaning.

(2) For the purposed of clauses (c) and (d) of sub-rule (1), before allowing entry of a person in the sewer, sewage shall be totally emptied.”

I have heard the learned counsel for the parties and perused the paper book of the case. It is not disputed that two persons one of whom was mechanic and the other person was an employee of the hotel had gone inside the tank for the purpose of repairing of the submersible motor and ultimately resulted into death of both the persons. During the course of arguments learned counsels have drawn my attention to the Post Mortem Report (Annexure P-3) which suggests that mud was present in the deceased and the Thorax indicated that Congested, Petechial Hemorrhage present. During the course of arguments photographs of the bodies of the deceased also suggests that a lot of wet mud was present on their bodies. Rules which have been referred to by the learned counsel for the respondents being Statutory in nature mandated a pre-condition for the purpose of entering into the sewage and septic tank which provides that no person shall be allowed to clean a sewage manually without **protective gear** and safety devices under the Rule except the following instances which have been mentioned in the Rule itself. Sub Rule (2) of Rule 3 provides that for the purpose of clause (c) and (d) namely, for removal of submersible pump sets fixed at the bottom of the suction wells and for the reconstruction of the

manhole or rectification of the sewer main before allowing entry into sewage main, sewage shall be totally emptied. In other words, whenever, person is to enter into a sewage tank for at least these two purposes as aforesaid, the sewer has to be totally emptied.

In the present case, the deceased had entered into the sewage tank for the purpose of repair of submersible pump which on the basis of analogy would also be included in clause (c) i.e. for the removal of submersible pump fixed at the bottom of the suction wells. The issue *as to whether the tank was a sewage or sewer pump and the issue as to whether it was empty tank or it was filled up with some water and the issue as to whether the owner of the hotel who is the petitioner had taken statutory protections or not* is a matter which is a subject matter of investigation by the police and may require custodial investigation.

During the course of proceedings, the petitioner has also placed on record some receipts vide Annexure P-5 and P-6 dated 01.11.2019 to show that some equipment's have been purchased by the company. FIR in the present case has been lodged on 14.10.2019 which is prior to the date of purchase of the aforesaid receipts and therefore, these receipts have no significance so far as the present case is concerned. The question as to whether at the time of occurrence the statutorily required precautions were taken or not is to be seen at the time of investigation.

In view of the above, this Court does not find any merit in the present case and since the custodial investigation would be required in the case in which occurrence has taken place which has culminated into death of two persons and therefore, finding no merit in the present petition, the same is hereby dismissed.

5th February, 2020

Shivani Kaushik

Whether speaking/reasoned

Whether Reportable

[JASGURPREET SINGH PURI]

JUDGE

Yes/No

Yes/No