

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

(204)

CRM-M-15246-2020.
Date of Decision:-13.10.2021.

Raju Singh @ Raju

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Manjeet Kaur, Advocate for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is the first petition under Section 439 Cr.P.C. praying for issuance of regular bail to the petitioner in FIR No.90 dated 07.06.2018 under Section 304-A of IPC, converted into Section 302 of IPC after one and a half year from the date of FIR, registered at Police Station Sardulgargh, District Mansa.

Learned counsel for the petitioner has submitted that in the present case, FIR under Section 304-A of IPC was registered on 07.06.2018 and as per the said FIR, the allegation against the petitioner was that he had taken the brother of the complainant to drink alcohol and to take both in the canal, they had then gone to the water works and the said brother of the complainant i.e., Kani Ram had drowned in the tanks of water works. It is submitted that on the basis of the said allegations, FIR was registered only

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under Section 304-A of IPC. Learned counsel for the petitioner has submitted that the petitioner was arrested on 08.06.2018 and was thereafter released on bail. It is argued that after a delay of more than 01 year, 01 month and 03 days, the said offence under Section 304-A of IPC has been converted into Section 302 of IPC, without any basis. It is further submitted that the complainant has been examined in the present case and a perusal of his cross-examination would show that several improvements had been made by the complainant and the complainant had also stated in his cross-examination, which is at page 26 of the paper book, that after having moved an application for inquiry, he had admitted that no fresh statement of his was recorded by the police and it had been admitted by him that he did not visit the office of the SSP Mansa, to pursue his application Exhibit PW-1/C. It is also argued that even as per the medical opinion, the death had taken place due to drowning and even after receiving the Chemical Examiner's report, there was no opinion of any poison etc. having been given nor was there anything on record to show that there was any injury caused to the deceased. It is submitted that the petitioner has been in custody since after the offence under Section 302 IPC was added i.e., since 25.11.2019 and he has been in custody for a period of almost 01 year and 09 months, and the challan has been presented in this case and out of 16 prosecution witnesses only 04 have been examined and, thus, the trial is likely to take time moreso, on account of the present pandemic. It is also submitted that in fact a simple case of drowning has been sought to be brought under Section 302 of IPC on account of the fact that Balbir Singh, the brother of the complainant was convicted for the murder of the father of the petitioner.

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Learned State counsel has opposed the bail application and has submitted that the offence under Section 302 of IPC has been added after inquiry. The custody certificate dated 10.09.2021 has also been produced on record by the learned State counsel. As per the said custody certificate, as on 10.09.2021, the petitioner had already undergone 01 year 09 months and 15 days of custody and he is not involved in any other case.

This Court has heard the learned counsel for the parties.

Keeping in view the above facts and circumstances, moreso, the fact that in the present case FIR was originally registered on 07.06.2018 under Section 304-A of IPC and the petitioner was released on bail on 08.06.2018 and after a period of more than 01 year and 01 month and 03 days, the offence under Section 302 IPC has been added after deleting Section 304-A of IPC and after the same, the petitioner was arrested on 25.11.2019 and that the petitioner has been in custody for a period of 01 year, 09 months and 15 days and 12 more witnesses are to be examined and, thus, the trial is likely to take time moreso, on account of the present pandemic and the statement of the complainant has already been recorded and as is apparent from the said statement that the complainant has specifically stated in his cross-examination that after the application Exhibit PW1/C, no fresh statement of the complainant was recorded nor did he visit the office of SSP Mansa, to pursue the said application and also that there are some improvements made in the said cross-examination and even as per the medical opinion, the cause of death is stated to be drowning and there is nothing on record to show that any injury had been caused to the deceased or any poison etc. had been administered to him, and thus, the present petition deserves to be allowed.

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Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to the fact that he is not required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present petition.

(VIKAS BAHL)
JUDGE

October 13, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No