

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

230

CRM-M-29076-2021
Date of decision: 26.10.2021

HEMDUTT @ LALA

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Baljeet Beniwal, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 53 dated 17.02.2020, registered under Sections 346, 302, 120-B read with Section 34 IPC at Police Station Mundkati, District Palwal.

Learned counsel for the petitioner at the very outset has relied upon the order dated 2.7.2021 passed in CRM-M-39349 of 2020 by this Court, the operative part of the order read as under:-

“Counsel for the petitioner has submitted that the FIR was registered on the statement of Rajesh Sharma, with the allegations that on 13.02.2020, his younger brother Ravi went away from home and they were searching for him but could not find him. The FIR also gave the description and clothes worn by Ravi. Later on, on 20.02.2020, the police party found the dead body of the deceased in a forest area of village Sondh. Thereafter, the police initiated proceedings under Section 174 Cr.P.C. and recorded the statement of 02 persons namely Vishnu Kumar and Ashok Kumar under Section 175 Cr.P.C. wherein Vishnu Kumar stated that his brother/deceased was a drug addict and due to intoxication, he may have died after falling into the well. Similar was the statement made by Ashok

Kumar, another brother of the deceased – Ravi.

Counsel for the petitioner has further submitted that on 11.03.2020, the police recorded the supplementary statement of Rajesh Kumar under Section 161 Cr.P.C. in which for the first time, it is stated that he suspect that the co-accused Hem Dutt @ Lala and the petitioner – Rakhi may have kill Ravi and thrown his body into well. The ground for suspicion was stated to be a fight between the deceased and both the accused and for that reason, they might have killed him.

Counsel for the petitioner has also submitted that thereafter, the co-accused Hem Dutt @ Lala were arrested and the police recorded his confessional statement.

Counsel for the petitioner has also argued that as per the disclosure statement of the co-accused – Hem Dutt @ Lala, it is stated that as per the plan with the petitioner, in order to take revenge of the enmity with Ravi, he called him on 13.02.2020 and as per the pre-plan, he offered drinks to Ravi and after he was heavily drunk, he took him into the forest area of village Sondh and stopped his motorcycle near a well on the pretext of urinating and when Ravi was sitting on the edge of the well, he pushed him with intention to kill.

Later on, the petitioner was arrested and as per the own disclosure statement of the petitioner – Rakhi, it was stated that she was having an affair with the deceased – Ravi that she has developed illegitimate relations with the deceased – Ravi and they were involved in each other. Hem Dutt @ Lala used to visit her husband Chet Ram, who is an Electrician and the petitioner also developed illegitimate relationship with Hem Dutt @ Lala. On coming to know the same, the deceased – Ravi started threatening the petitioner and on that pretext, the petitioner – Rakhi and Hem Dutt @ Lala prepared a plan to kill Ravi. It is further submitted that except this disclosure statement, there is no other evidence against the petitioner.

It is further submitted that the petitioner is the first offender and whether she had a meeting of mind with the co-accused Hem Dutt @ Lala, will be a matter of evidence/trial. It is also submitted that it is own case of the prosecution that at the time when the incident took place, when Hem Dutt @ Lala allegedly pushed the deceased into a well, the petitioner was not present and the allegations against her are only of conspiracy prior to that, which again will be a matter of trial/evidence.

Counsel for the petitioner has also submitted that as per the affidavit filed by the Deputy Superintendent of Police, there are call details between the petitioner and the co-accused Hem Dutt @ Lala as well as the petitioner and deceased – Ravi and the co-accused Hem Dutt @ Lala and deceased. It is further submitted that the call details of the petitioner and the deceased given in the affidavit, the last call was made on 20.01.2020 and thereafter, there is no call detail between the petitioner and the deceased, which reflects that the

petitioner was not on talking terms with the deceased after 20.01.2020 and all these points are subject-matter of the trial. It is further submitted that as per the Custody Certificate, the petitioner is in custody for the last 11 months and 09 days and she is not involved in any other case and till date, no prosecution witness has been examined.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail.

Counsel for the State on the basis of the affidavit of the Deputy Superintendent of Police, Hodal, has argued that the FIR was registered on 20.02.2020 and thereafter, on 11.03.2020, the complainant gave a written complaint raising a suspicion on Hem Dutt @ Lala that he might have committed the murder of Ravi and thereafter, Section 302/34 IPC was added and Hem Dutt @ Lala was arrested and the motorcycle was recovered along with his mobile phone. It is also submitted that as per the disclosure statement of Hem Dutt @ Lala, he demarcated the place of occurrence where he has committed the murder of deceased – Ravi.

Counsel for the State has also argued that after the arrest of the petitioner on 23.07.2020, her disclosure statement was recorded in which she has stated that she was having illegitimate relationship with Ravi and the co-accused Hem Dutt @ Lala and in conspiracy with the co-accused Hem Dutt @ Lala, he committed the murder of Ravi.

In reply, counsel for the petitioner has argued that the petitioner is a resident of village Banchari, Teshil Hodal, District Palwal whereas the incident took place in village Sondh, Teshil Hodal, District Palwal, which is the native village of the co-accused Hem Dutt @ Lala. It is also submitted that though there are call details between the coaccused Hem Dutt @ Lala and the deceased – Ravi on the date of incident, however, there is no call details between the petitioner and the deceased after 20.01.2020.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 11 months and 09 days; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required; no witness of the prosecution has yet been examined and the conclusion of the trial will take some time due to COVID-19 situation, this petition is allowed and the petitioner is directed to be released on bail subject to her furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.”

For the sake of brevity the facts are not reproduced again.

Learned counsel for the petitioner has argued that initially

when the statement of brother of the deceased Ravi namely Vishnu and Ashish were recorded under Section 175 of Cr.P.C, they have not raised any suspicion towards petitioner and it is only after 21 days when the supplementary statement of the complainant was recorded raising suspicion towards petitioner and co-accused Rakhi.

Learned counsel for the petitioner submits that only evidence against the petitioner is his own disclosure statement in which no motive is proved. Learned counsel for the petitioner has further submitted that on the perusal of the statement of the complainant himself no specific motive is attributed except that there was some illegitimate relations.

Learned counsel for the petitioner then refers to the disclosure of co-accused Rakhi wherein she has stated that she had developed illicit relation with deceased Ravi as well as petitioner - Hem Dutt @ Lala and the same was not relied by the deceased.

Learned counsel for the petitioner further submits that it will be a matter of trial that there was any motive for the petitioner to commit the offence as the entire evidence is based on circumstantial evidence and disclosure of the petitioner.

Learned State counsel on the basis of the affidavit of the Deputy Superintendent of Police, Hodal, District Palwal has stated that during the investigation, when the disclosure of the petitioner as well as co-accused Rakhi was recorded, it surfaced that they have committed murder of Ravi @ Ravi Shankar in conspiracy with each other and the petitioner had pushed Ravi in a well as a part of conspiracy. Affidavit speaks about certain call details between petitioner and co-accused Rakhi as well as with the deceased.

Learned State counsel could not dispute the affidavit of the DSP and also there is no specific allegation regarding any motive attributed towards the petitioner for committing the offence.

A perusal of the affidavit further shows that no call details relating to the date of incident i.e. 13.02.2020 are given to show the location of the petitioner and co-accused Rakhi with the deceased.

Learned State counsel has filed the custody certificate in Court today and as per the same the petitioner is in judicial custody for the last one year seven months and thirteen days.

Learned counsel for the petitioner in reply has submitted that petitioner is in initial custody for the last more than one year and seven months and is not involved in any other case. He further submits that out of 19 prosecution witnesses none has been examined so far and the trial is likely to take long time.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that co-accused Rakhi has already been released on regular bail; the petitioner is in long judicial custody; no prosecution witness has been recorded so far and also in view of the affidavit of the DSP concerned, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.

(ARVIND SINGH SANGWAN)
JUDGE

26.10.2021
Vishal

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No