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

Date of Decision: 29.11.2021

1. CRM-M-32057-2021 (O&M)

Abdul Khalik

.. Petitioner

Vs.

State of Haryana

..Respondent**AND**

2. CRM-M-33700-2021 (O&M)

Abdul Majid

.. Petitioner

Vs.

State of Haryana

..Respondent**CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ**

Present: Mr. R.S. Mamli, Advocate for the petitioner(s).

Mr. Bhupender Singh, DAG, Haryana.

Mr. G.C. Shahpuri, Advocate
for the complainant.

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Manoj Bajaj, J. (Oral)

Petitioners have filed these separate petitions under Section 439 Cr.P.C for grant of regular bail, pending trial in case FIR No.0091 dated 22.07.2019, registered under Sections 306 and 34 IPC (Sections 304, 365, 379-B and 34 IPC added and Section 306 IPC deleted later on), at Police Station City Partap Nagar, District Yamuna Nagar. The petitioners are in custody since their arrest on 22.04.2021.

The FIR was registered on the statement of Koshina w/o Kurban and the allegations as noticed by the Addl. Sessions Judge, Yamuna Nagar in the order dated 19.07.2021 are as under:

“.....FIR which was registered on the allegations that on 21.07.2019, ASI Jagmal Singh alongwith Head Constable Pawan Kumar was present at Grain Market, Khizrabad in connection with patrolling and checking in government vehicle bearing registration No.HR-58A-2028 being driven by EHC Yogesh Kumar when Koshina wife of Kurban met and suffered a statement to the effect that she is resident of Village Bombaypur, District Yamuna Nagar. She is

blessed with two daughter. Her mother-in-law and father-in-law had expired. Her husband Kurban aged 29 years was doing labour work. He had four brother. The marriage of her brothers-in-law namely Rijwan and Julfan was solemnized with daughters of Maksood residents of Dhaba. Her brother-in-law (Jeth) namely Julfan was residing with his wife Saliya at village Dhaba. Rijwan was residing in village Bombaypur with his wife Shabnam. There had been matrimonial dispute since four five years. Her husband Kurban was looking after whole the family. With regard to dispute between Rijwan and Shabnam, number of times panchayat was convened. The parents and family members of Shabnam were under the impression that the main culprit behind their dispute was Kurban. On 27.06.2019, family members of Shabnam namely Khalik, Kadir Wajid, Majid sons of Maksood, Sehdu Rehman Shahjad, Saddam, Israr, Sehbaj residents of village Dhaba, Tehsil Behat, District Saharanpur took her husband Kurban to UP from Tajewala Power House where they gave him beatings. Kurban took treatment from Government Hospital, Saharanpur. After two days, they brought Kurban to their house. Thereafter, Kurban remained under mental tension. The family members of Shabnam number of times extended threat to them. On 21.07.2019, in the evening, Kurban's health deteriorated. Her brother Rijwan took Kurban to Gaba Hospital, Yamuna Nagar where doctor declared him dead. Her husband had died due to beatings given to him by family members of Shabnam and mental tension and also on account of threats being extended by family members of Shabnam. It was requested that action be taken. Upon this, the present case FIR under Section 306, 34 of Indian Penal Code, 1860 was lodged. During investigation, statement of witnesses under Section 161 of Cr.P.C. were recorded. Site plan of the place of occurrence was prepared. The post mortem on the dead body was conducted. The doctor opined the cause of death due to epidural and subdural hematoma which is intemortem in nature and sufficient to cause death in due course of events. Upon this, Sections 306, 34 of IPC was deleted and Sections 148, 149, 365, 304 of Indian Penal Code, 1860 were added. SIT was constituted. Accused/applicants were arrested on 22.04.2021. During investigation, Section 379-B of IPC was also added. In pursuance of disclosure statements, dandas and snatched mobile were recovered. In pursuance of disclosure statement, accused Abdul Majid got recovered motorcycle used in offence. During further investigation, Kadir, Wajid, Sedu Rehman, Sehjad, Saddam, Israr and Sehbaj were found innocent. Sections 148, 149 of IPC were deleted and Section 34 of IPC was added. After completion of investigation, final report under Section 173 of Code of Criminal Procedure, 1973 was presented before the court."

Learned counsel for the petitioners has argued that the alleged occurrence took place on 27.06.2019 and the victim Kurban died on 22.07.2019 and the cause of death is the internal head injury as per the post

mortem report (Annexure P-2). He submits that though the FIR was registered initially for the offence punishable under Section 306 IPC, but after completion of investigation, the final report was filed for commission of offence punishable under Section 304 IPC. He submits that in all, there were nine accused and out of those, seven were found innocent and the final report was filed against the petitioners, namely, Abdul Khalik and Abdul Majid. According to him, the sister of these petitioners, namely, Shabnam is married to the real brother of victim Kurban and the petitioners have been falsely implicated after a long delay. He states that after considering the final report, the charges against the petitioners have been framed for the offence punishable under Section 304 IPC. According to him, the trial is yet to commence, as no witness has been examined, therefore, the petitioners be released on bail.

The prayer is opposed by learned State counsel assisted by ASI Lakhwinder as well as the counsel for the complainant, who have argued that in case, the petitioners are released on bail, they may influence the prosecution witnesses. However, it is not disputed that out of nine accused, seven were found innocent and the charges against the petitioners have been framed, but out of total 48 prosecution witnesses, none has been examined.

Considering the above background, custody of the petitioners, the nature of the case and the fact that the material witnesses are the close relatives of the victim and there does not seem to be any possibility of their being won over at this stage, the further detention of the petitioners behind the bars may not be necessary for any useful purpose, who are presently confined in judicial custody after their arrest. Further, the prosecution is likely to consume considerable time to examine its witnesses, therefore, the

trial will also take a long time to conclude.

Resultantly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioners be released on regular bail in the above case, subject to their furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

The petitions are allowed.

29.11.2021
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No