

222

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.32639 of 2021
Date of Decision: 18.11.2021

ANKIT KUMAR @ HITESH

.....Petitioner

Vs

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sunil Panwar, Advocate and
Mr. Dhruv Singh, Advocate
for the petitioner.

Mr. Vivek Chauhan, Addl. A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

Present order is being passed in continuation of order dated 30.09.2021, vide which the case was adjourned to 02.11.2021 and in the meanwhile the petitioner was also directed to bring on record the copy of order dated 16.09.2021 passed by the trial Court. For ready reference, the order dated 30.09.2021 is reproduced hereinasunder:-

“[1]. Petitioner seeks grant of regular bail in his second attempt under Section 439 Cr.P.C in case bearing FIR No.102 dated 23.04.2018, registered under Sections 304-B, 34 IPC (Sections 302, 201 and 120-B added later on after 28.03.2019) at Police

Station Yamuna Nagar, District Yumana Nagar, Haryana. Earlier petition bearing CRM-M No.41861 of 2020 was got dismissed as withdrawn on 18.12.2020.

[2]. FIR was lodged by the complainant Suresh Kumar with the allegations that his daughter Prerna was married to the petitioner on 01.11.2017 according to Hindu rites and ceremonies. Sufficient dowry was given in the marriage beyond the capacity of the complainant. Petitioner was not happy with the dowry given in the marriage. A motorcycle make splendor was given in the marriage, but the petitioner, his mother, Tau (uncle) Dev Kumar, Tai (aunt) Urmila and Joni etc. were not happy with the same. Tau (uncle) Dev Kumar and Tai (aunt) Urmila had no child with them. Petitioner was taken in adoption by them. They all started harassing the daughter of the complainant by saying that Bullet motorcycle and car were not given in the marriage. Petitioner sold the splendor motorcycle given in the marriage soon after the marriage.

[3]. On 19.04.2018, daughter of the complainant Prerna came to the house of the complainant with the petitioner and told the complainant, his brother Subhash and cousin brother Dharam Chand that the petitioner and his family members are troubling and harassing her for not bringing bullet motorcycle and car from her parental house. The complainant explained his difficulty and made the petitioner to understand and on the same day Prerna was sent with the petitioner. On 23.04.2018 at about 10.30 A.M., Dev Kumar called the complainant and told him to come to Civil Hospital,

Yamuna Nagar. Prerna's condition was bad. The complainant and his family members went to the Civil Hospital and saw the dead body of Prerna lying in the mortuary. She was having a big scar at the neck. On inquiries, the petitioner told that in the morning at about 9.30 A.M., Prerna got herself hanged with the help of scarf (chunni) from the water shower in the bathroom. The complainant has alleged that his daughter has hanged herself on account of harassment meted to her for demand of motorcycle and car.

[4]. Learned counsel for the petitioner submitted that Prerna was in fact not a female, but a transgender. She did not want to get married because of her physical orientation, but was forced to marry with the petitioner just to commit fraud upon him. Factum of her being a transgender was not disclosed to the petitioner by the complainant and his family members before the marriage. Petitioner came to know only after the marriage. Due to her physical orientation, daughter of the complainant started living in depression as she felt herself ashamed and humiliated on account of the act of her parents in pressurizing her to marry with the petitioner and thereby cheating him. The matter was brought to the notice of the complainant, but he was adamant not to enter into any amicable settlement. This further aggravated the mental status of health of the deceased, who ultimately committed suicide by hanging on 23.04.2018 i.e. in the period less than six months of her marriage on 01.11.2017.

[5]. In the post mortem conducted by the Board of Doctors, the following physical attributes were found:-

- “(a) facial hair present;*
- (b) hair over chest, abdomen, both upper limb, lower limb, around nipples, hair on underarms present;*
- (c) atrophied penis present and*
- (d) both breasts under developed with very less subcutaneous fatty tissue.*

xx xx xx xx

The Board of Doctors found that the deceased as a transgender/true hermaphrodite and not a female.”
[6]. Learned counsel further submitted that the factum of suicide by hanging was corroborated by the presence of ligature mark as noticed by the Board of Doctors during post mortem examination of the deceased. The dimension of the ligature mark reads as under:-

“Ligature mark size 9 inch in length, Brownish black in colour present over the upper most part of the neck with width varying from 1.50 inch to 1.75 inch at places and 3 inches from right clavicle, 4 inches from left clavicle, 2.75 inches from sternoclavicular notch present over neck. On dissection, there is presence of infiltration of Blood in underlying Tissues with fracture hyoid bone seen.”

[7]. Post mortem report was prepared on 23.04.2018. The opinion regarding cause of death was deferred as the same was to be given only after receiving the viscera report. Viscera was sent for chemical analysis and uterus, both ovary, both fallopian tubes, atrophied penis looking external genitalia were sent for histopathological examination and blood

sample was sent for chromosomal study.

[8]. According to learned counsel for the petitioner opinion regarding cause of death was kept pending only with a view to rule out poison in the aforesaid analysis. Otherwise there was nothing to await in the absence of any poison being detected in the aforesaid analysis. The cause of death on account of asphyxia due to hanging was apparent in view of nomenclature of ligature mark so found by the Doctors during post mortem examination. In the medical report dated 02.04.2019 given by the Medical Board of Doctors the following endorsement has come to fore:-

“After receiving histopathological report/report from BPS Khanpur Kalan/FSL Madhuban, the board of doctors (as per PMR No.KG/AG/GD/04/18/PMR/YNR) is of the opinion that the deceased was a true hermaphrodite (as she had both male and female external genitals/reproductive organs).”

[9]. Learned counsel for the petitioner vehemently submitted that in view of post mortem report dated 23.04.2018, presence of ligature mark with a dimension as notice above and in the absence of any poison in chemical analysis and other organs, there was no occasion for medical board to give opinion of asphyxia due to strangulation after more than 11½ months of the occurrence. The cause of death given by the Board of Doctors i.e. asphyxia due to strangulation is contrary to medical evidence already on record which shows suicide by hanging which is duly corroborated by the nomenclature of ligature mark present at the neck of the deceased and the other features noticed by Board

of Doctors during post mortem examination.

[10]. Learned counsel further submitted that ligature mark was visible in the photographs with the description noticed in the preceding para. The ligature mark was present on the upper part of the neck which clearly suggested that it is case of hanging. In case of strangulation, the ligature mark ought to be present in the central or lower portion of the neck and not on the upper portion.

[11]. Learned counsel also pointed out that in the FSL report dated 28.05.2018, it was recorded that saliva was detected on Exhibit-1b (Lady's shirt) worn by the deceased. Presence of saliva is again a strong indicator of death by hanging and not by strangulation. Learned counsel further pointed out that there was no injury marks on the body of the deceased, nor of any nail marks or any sign of struggle which also negated the alleged theory of strangulation. The chunni recovered by the Police was also sent for forensic examination. As per FSL report dated 26.07.2018, the chunni was examined physically and under optical microscope. No stretching mark was found on the chunni. A test was conducted in the laboratory on the chunni by hanging of 70 kgs. which is a weight of normal adult human being. On weighment, it was found that chunni was strong enough to bear the weight. This fact also indicated that chunni was used for hanging and that supported the case of death due to asphyxia by hanging.

[12]. Learned counsel further submitted that earlier petition bearing CRM-M No.41861 of 2020 was got

dismissed as withdrawn by the petitioner on 18.12.2020. Thereafter, an application filed by the complainant/prosecution under Section 319 Cr.P.C. for summoning co-accused Dev Kumar, Urmila and Jony @ Himanshu was dismissed by the trial Court against which CRR No.148 of 2021 is pending for 27.10.2021. Out of 18 prosecution witnesses, only five witnesses have been examined. Petitioner is in custody for more than 2 years and 3 months.

[13]. Vide order dated 18.08.2021 passed by this Court, learned counsel for the petitioner was directed to place on record interlocutory orders passed by the trial Court from 18.12.2020 onwards till date. In compliance of the aforesaid order, photocopies of the interlocutory orders have been sent to this Court through whatsapp group meant for videoconferencing.

[14]. Perusal of order dated 22.01.2021 passed by the trial Court would indicate that the application under Section 319 Cr.P.C. was dismissed and the case was adjourned for 15.02.2021 for prosecution evidence. Remaining unexamined PW's were summoned for the said date. The accused was ordered to be produced through video conferencing. On 15.02.2021, petitioner was produced through video conferencing. One PW namely Arvind was examined as PW-4. Summons issued to PW HC Mandeep Singh was received back duly served and summons issued to PWs namely Dharampal Chand and Subhash were received with report of second service, however they did not appear in the Court. They were summoned throughailable warrants for 23.03.2021. Remaining unexamined PWs

were also ordered to be summoned for the said date. On 23.03.2021, no PW was present. Summon issued to PW Dr. Kartik was received back duly served and summons issued to PWs namely HC Pardeep and Dr. Gaurav Dhari were received with the report of second service. Summon issued to PW Dr. Angrej Gupta received back unserved. Bailable warrants were issued to PWs namely Dharam Chand, Subhash Chand and HC Mandeep Kumar received back duly served, but they did not appear in the Court. Therefore, fresh summons were issued to PW Dr. Angrej Gupta and PW Dr. Kartik, HC Pardeep and Dr. Gaurav Dhari through bailable warrants. Fresh bailable warrants were issued to PW HC Mandeep Kumar and non-bailable warrants were issued against PWs Dharam Chand and Subhash Chand for 05.05.2021. By office order the case was taken up on 04.05.2021 and was further adjourned to 27.07.2021 in view of pandemic directions issued vide letter bearing No.6470-95 dated 03.05.2021 by the District and Sessions Judge, Yamuna Nagar at Jagadhri. On 27.07.2021, PW HC Mandeep Singh was examined as PW-5. Bailable warrants issued to PWs Dr. Kartik, Dr. Angrej Gupta, Dr. Gaurav Dhari and HC Pardeep Kumar were received back with the report of second service. Fresh bailable warrants were issued to the aforesaid witnesses for 17.08.2021. On 17.08.2021, no PW was present. The said order reads as under:-

“Accused Ankit Kumar @ Hitesh produced before me in custody through V.C. No PW is present. Summons issued to PW Subhash

received back duly served and summon issued to PW Dhram Pal received back with the report of second service. Bailable warrants issued to PWs Dr. Kartik, Dr. Angrej Gupta, Dr. Gaurav Dhari received back with the report of second service. Bailable warrant issued to PW HC Pardeep received back duly served, but they did not appear before the Court. Adjournment sought. Heard. Hence, fresh bailable warrants be issued to PW Dr. Angrej Gupta, Dr. Kartik and Dr. Gaurav Dhari for 16.09.2021. Non-bailable warrant be issued to PW HC Pardeep for the date fixed. PWs Dhram Pal and Subhash be summoned through bailable warrants in the sum of Rs.5000/- with one surety in the like amount for the date fixed. That apart summons be also issued to PWs mentioned at serial no.17 for the date fixed. Till then accused Ankit Kumar @ Hitesh be kept in custody and be produced before the Court on the date fixed through V.C.”

[15]. Learned counsel for the petitioner with reference to the aforesaid orders submitted that the status of the trial on 16.09.2021 could not be produced on record as the aforesaid orders placed on record were prior thereto. However, in the event of decision of CRR No.148 of 2021 on 27.10.2021 in favour of the prosecution, the trial would be held de novo. As of now only five prosecution witnesses have been examined out of total 18 witnesses. Co-accused Seema has already been granted regular bail vide order dated 12.11.2020 passed by this Court in CRM-M No.21160 of 2020. Petitioner is in custody since 24.05.2019.

[16]. Learned State counsel however opposed the bail on the ground that the death has taken place within six months of the marriage. Reverse presumption is attached and the onus is on the petitioner to prove his innocence. At this stage, there cannot be any evidence to meet out such an onus in favour of the petitioner.

[17]. After hearing learned counsel for the parties, I find that the conclusion of the trial may get delayed in view of pendency of CRR No.148 of 2021 which is fixed for 27.10.2021. At this stage, it would be just and appropriate to defer this case beyond 27.10.2021.

[18]. Adjourned to 02.11.2021.

[19]. In the meanwhile petitioner may also place on record the copy of order dated 16.09.2021 passed by the trial Court in the context of examination of remaining prosecution witnesses, if any.

In compliance of the aforesaid order, learned counsel for the petitioner firstly submits that pendency of CRR No.148 of 2021 may prejudice the case of the petitioner inasmuch as that the said petition came up for hearing before this Court on 27.04.2021. Notice of motion was issued on that day and the case was adjourned for 29.07.2021. On 29.07.2021, the case was further adjourned to 27.10.2021 through the NIC. Now the said case again has been adjourned to 23.02.2022 through the NIC and even respondents have not put in their appearance before the Court. In any case, the said crl. revision petition may take sometime in its culmination.

Learned counsel has placed on record photocopy of orders 16.09.2021, 18.10.2021 and 27.10.2021 to contend that that the summoned witnesses i.e. Dr. Angrej Gupta, Subhash Chand and Dharam Chand have not been examined so far. Complainant has already been examined as PW-3, wherein the complainant has even denied the suggestion that his daughter was a transgender.

Learned State counsel however opposed the bail with reference to the prosecution evidence on record.

For the reasons recorded in detail vide order dated 30.09.2021 and in view of the situation arising out due to COVID-19 pandemic, I deem it appropriate to enlarge the petitioner on regular bail, without adverting to the merits of the case,

In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

November 18, 2021

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No