

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

CRM-M-32774-2020
Reserved on : 15.09.2021
Pronounced on : 16.09.2021

Tara Chand

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Bipan Ghai, Sr. Advocate with
Mr. Paras Talwar, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

Mr. Suresh Kumar Kaushik, Advocate
for the complainant.

(through video conferencing)

ARVIND SINGH SANGWAN, J.

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. 37 dated 06.02.2020, registered under Sections 302/201 of the IPC at Police Station Bilaspur, District Gurugram.

Learned senior counsel for the petitioner has submitted that as per allegations in the FIR, registered at the instance of complainant Anil Kumar, it is stated that on 03.02.2020, his brother Manoj Kumar has gone for the repair of his tractor and he left the tractor at an agency but did not return back. Thereafter, on 06.02.2020, petitioner Tara Chand came to their village and informed that they had consumed liquor with Manoj Kumar near a liquor vend and thereafter, Manoj Kumar was left there and his

whereabouts are not known and the FIR was initially registered under Section 346 IPC.

Learned senior counsel further submitted that thereafter, the police, on 07.02.2020, recorded a recovery memo regarding recovery of a stone, which was blood smeared and on the same day, the police prepared a site plan regarding recovery of a heavy stone, which was shown at point 'E' of the site plan.

Learned senior counsel, thus, submitted that the petitioner was later on arrested on 12.02.2020 and again, vide recovery memo dated 12.02.2020, the stone was shown to be recovered from a vacant place near a warehouse. The stone was smeared with blood and sand.

Learned senior counsel further submitted that the police also recorded the disclosure statement of the petitioner on the same day, i.e. 12.02.2020, in which the petitioner allegedly disclosed that on 03.02.2020, Manoj @ Monu (deceased) called him to village Kalwadi, to which, the petitioner told him that he was sleeping but Manoj again asked him to come there. The petitioner had a conversation with his friend Naresh and asked him to come along. Thereafter, the petitioner reached to meet Manoj and received a phone call from Khushi Ram asking about his location and then the petitioner and Naresh went to village Kalwadi, where they met Khushi Ram and Dharambir @ Bhakkal at a liquor vend. After five minutes, Monu got down from bus as he had gone to Tauru and had parked his tractor at an agency. Thereafter, the petitioner, Monu and Naresh went to liquor vend and purchased liquor and some food to eat and then, they came to village Fatehpuri to an empty room constructed near a warehouse and consumed liquor. When some liquor was left, Dinesh @ Handi, Dharam @ Dharkhera

and Lalit also came there along with one bottle of liquor. When the liquor got finished, all the eight persons got up and Dinesh @ Handi started his auto and started showing his stunts in the empty fields. In the meantime, Chanderbhan @ Anil also came there on his motorcycle. Some more bottles of liquor were brought for Dinesh @ Handi, Dharam @ Bareda and Lalit. The petitioner told that he had no money as his salary would come on 7th of the month and then, the other persons arranged for the liquor. Thereafter, all of them went away and the petitioner and Monu stayed there. The petitioner gathered some dried grass and burnt it to make fire to keep themselves warm. Monu asked the petitioner to order for a phone from Amazon but the petitioner said that he had no money. On this, a verbal spat started and Monu abused the petitioner and taunted that he would give a cheque in his name. Then, keeping in mind the old dispute with Monu, the petitioner struck Monu with a liquor bottle and hit his head with a half quarter of bottle. Thereafter, the petitioner picked a heavy rock and hit Monu on his head with an intention to kill him and threw him into a well. Thereafter, the petitioner set some dried grass on fire and threw the same into the well and ran away from the spot on his motorcycle.

Learned senior counsel has referred to the injuries in the postmortem to submit that there are three lacerated wounds on fronto parietal scalp, right parietal scalp and mid fronto parietal scalp near vertex and some burn injuries on the body. It is further submitted that injuries, sustained by the victim/deceased do not corroborate the version of the prosecution as per the disclosure of the petitioner. Learned senior counsel further argued that except for the own disclosure of the petitioner, there is no evidence against him.

Learned senior counsel has further referred to the statement of PW-1 Deepak Mathur, Medical Officer, General Hospital, Gurugram, who conducted the postmortem, to submit that in the cross-examination, this witness has stated that the injuries, mentioned in the postmortem, are bound to occur in case of a single fall if a person falls head wise from a height of 10/15/20 feet. It is further stated that blunt force impact can be caused on the person of the deceased by a fall. In the opinion of this witness, including opinion of other doctors, the injuries on the person of the deceased can be caused by any kind of other stone like object and not only and only by the stone produced before the doctors.

Learned senior counsel, thus, argued that there is no specific opinion given by the doctors that the injuries can be caused only by the stone, which was recovered during investigation.

Learned senior counsel has further referred to the statement of PW-2/complainant Anil Kumar to submit that he has made improvement while recording his examination-in-chief as it is stated that wife of Manoj, namely Sangita, has made a telephone call to petitioner Tara Chand, who told that on 03.02.2020, near a liquor vend in village Kalwadi, they all drank liquor and thereafter, Manoj was left there and others went home, though on 06.02.2020, Tara Chand visited the house of Manoj and told his wife that after they drank liquor at the said vend, the shoes of Manoj were lying behind the liquor vend and it was smeared with blood and thereafter, PW-2 visited the place of occurrence and found the shoes of Manoj smeared with blood.

Learned senior counsel further submitted that the fact regarding making a phone call to wife of Manoj by the petitioner on 03.02.2020 is not

mentioned in the FIR as well as in the subsequent statements, therefore, the efforts have been made to involve the petitioner on account of personal rivalry.

Learned State counsel, assisted by learned counsel for the complainant, on the basis of the affidavit of the Deputy Commissioner of Police, Manesar, Gurugram has opposed the bail and stated that an SIT was constituted, which was headed by ACP, Pataudi, Gurugram. It is stated in the report of SIT that initial investigation was conducted by ASI Ashok, who during investigation on 07.02.2020 recovered the dead body of Manoj from a well nearby a liquor vend in the village Kalwadi. Wife of the deceased made a separate complaint that on 05.02.2020, the petitioner told her that he had left Manoj at Kalwadi liquor vend on 03.02.2020. It is further stated that as per postmortem report, the cause of death is head injury following the ante-mortem blunt force impact, external burn injuries are also ante-mortem with body continuing to burn after death and thereafter, Section 302 IPC was added.

It is further stated that subsequent investigation was conducted by Inspector Ajay Kumar and the petitioner was arrested on 10.02.2020 and his police remand was taken and his disclosure statement was recorded. As per his disclosure, accused/petitioner demarcated the place of occurrence and got recovered the stone. On 06.03.202, the opinion regarding stone was taken from the doctor, who stated that external injuries (1 to 3) were consistent with brick/stone or by a similar kind. It is further stated that during investigation, conducted by the SIT, report from FSL, Madhuban was received, as per which, petrol, kerosine, diesel or their residue could not be detected in Ex. P-6 (a small piece of brick; some soil powder; some

vegetative material along with a piece of partially burnt tetra pack).

Learned State counsel, assisted by learned counsel for the complainant, has argued that on further investigation of other suspected persons regarding their call details, they were found to be present at village Pathred at the time of occurrence and since in the disclosure of the petitioner, nothing was stated about their involvement, they were found innocent. It is further submitted that the petitioner is in judicial custody since 10.02.2020 and out of total 23 prosecution witnesses, only 02 witnesses have been examined so far.

Learned State counsel could not dispute that petitioner is not involved in any other case as per custody certificate filed in the Court.

After hearing learned counsel for the parties, I find merit in the present petition to grant concession of regular bail to the petitioner, for the following reasons:

(a) In the FIR version, nothing is stated about the alleged telephone call made by the petitioner on 03.02.2020 to the wife of deceased Manoj, though the FIR was registered on 06.02.2020 and the statement of PW-2 Anil Kumar, on oath, appears to be improvement in the prosecution version.

(b) As per statement of PW-1, Dr. Deepak Mathur, who conducted the postmortem, the cause of death was head injury following the ante-mortem blunt force impact and in cross-examination, he has stated that it can occur in case of a single fall if a person falls head wise from a height of 10/15/20 feet and it is the own case of

the prosecution that the dead body of the victim was recovered from a well. It is also the opinion of the doctors that the injuries can be caused by any kind of other stone like object and not only and only by the stone recovered by the police.

(c) The recovery memo dated 07.02.2020 shows that recovery of blood smeared stone from the spot was effected by the police prior to arrest of the petitioner as the petitioner was arrested on 10.02.2020 and two days thereafter, when the disclosure of the petitioner was recorded, the police has again recovered the stone on 12.02.2020, vide a separate recovery memo. Even the site plan, which was prepared on 07.02.2020, while preparing the first recovery memo, at point 'E', the stone was shown to have been recovered by the police.

(d) It is a case based on 'last seen' evidence and except the disclosure of the petitioner, wherein the stone was recovered, qua which, the prosecution has already made an earlier recovery memo on 07.02.2020, prior to arrest of the petitioner, there is no other evidence against the petitioner and, therefore, it will be a matter of trial whether the petitioner had caused injuries or Manoj died due to fall into the said well.

(e) Though, as per aforesaid affidavit, the SIT has conducted the investigation concluding that the petitioner has caused the murder of Manoj, however,

considering the discrepancies in the prosecution version, I deem it appropriate to grant the concession of regular bail to petitioner considering the fact that he is in judicial custody for the last about 01 year and 07 months; out of total 23 prosecution witnesses, only 02 witnesses have been examined so far and also in view of the fact that statement of the complainant has already been recorded, wherein he has tried to make some improvements from the FIR version.

Therefore, for the reasons recorded in the foregoing paragraphs, the present petition is allowed. The petitioner is ordered to be released on regular bail on her furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.

However, nothing observed herein shall be construed as an opinion on the merits of the case.

16.09.2021

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No