

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

224

CRM-M-45182-2021

Date of Decision: 03.11.2021

Sanjay @ Sanju

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Randeep S. Dhull, Advocate, for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana,
assisted by ASI Sandeep.

Mr. Yaseen Sethi, Advocate, for
Mr. Himanshu Gupta, Advocate, for the complainant.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.62 dated 30.04.2018 at Police Station Titram, Kaithal under Sections 302/201 IPC (Section 34 IPC added later on).
2. The FIR was lodged at the instance of Sukhbir, wherein it is alleged that his younger brother Kapil Dev usually goes for farming and sleeps in the room constructed at their fields and would return in the morning for milking the buffaloes. However, on 30.04.2018 he did not return back and on account of which the complainant's son Vinod Kumar was sent to the fields to look for Kapil Dev. Vinod Kumar returned back after a short while and informed that Kapil Dev is hanging from a Guava Tree with the

help of a cloth. Upon receipt of said information, the complainant and his father rushed to the fields, where they saw that Kapil Dev was hanging from a tree. The complainant alleged that some unknown persons had killed Kapil Dev and had thereafter hanged him from a tree.

3. Learned counsel for the petitioner has submitted that the petitioner is nowhere named in the FIR and has falsely been implicated in the present case and that too after 3 years of lodging of the FIR on the basis of statements of some co-villagers recorded on 08.05.2021, who claim that they had seen the petitioner going towards the fields of deceased on the night of occurrence.
4. Learned counsel for the petitioner has further submitted that it is infact a case of suicide and that the post-mortem report (Annexure P-2) shows that the cause of death has been opined to be hanging, which is stated to be ante-mortem. Learned counsel has also referred to the report (Annexure P-3) pertaining to examination of two steel glasses and two plastic bottles for fingerprints, which did not reveal existence of any fingerprints.
5. Learned counsel has next referred to the crime scene visit report (Annexure P-4), wherein it has been opined and concluded that the possibility of foul play is ruled out. Learned counsel has also referred to the opinion of a Medical Board (Annexure P-5) constituted subsequently, which has also opined that the hanging was ante-mortem in nature. A reference has also been made to the report of Forensic Science Laboratory (Annexure P-7), as per

which neither blood nor skin & hair could be detected on the piece of cloth, which had been sent for chemical examination, which ruled out the possibility of involvement of any other person.

6. Learned counsel has submitted that in the instant case the petitioner had volunteered to undertake polygraph test and as per report (Annexure P-8) of the polygraph examination, nothing incriminating could be elicited from the petitioner and it has been specifically opined that the analysis and evaluation of polygrams do not reveal any deceptive responses. It has been submitted that in the absence of any evidence to connect the petitioner with the alleged death of Kapil Dev, the petitioner cannot be held responsible for the same solely on the basis of statements of co-villagers recorded 3 years after the occurrence without there being any explanation for such delay.
7. Opposing the petition, learned State counsel assisted by learned counsel for the complainant has submitted that in the instant case it is evident that it is a case of murder of the deceased Kapil Dev and that subsequently his dead body had been hanged from a tree so as to mislead and to show it to be a case of suicide. Learned State counsel has referred to the post-mortem report, wherein it has been recorded that the mark of ligature was found encircling the entire neck and his hyoid bone was also found to be fractured, which is a sure sign that it is a case of strangulation. It has also been submitted that in the crime scene report, it is infact mentioned that both the knee joints of deceased were about 2/3 inches above the

earth and his feet were found lying on the earth, which would again show that it is not a case of hanging, but is a case of murder.

It has also been submitted that the witnesses, who had seen the accused going towards the fields of deceased have also identified the motorcycle on which the petitioner was going and that, in these circumstances, the complicity of the petitioner is clearly evident. The learned State counsel has, however, informed that the petitioner happens to be involved in 3 other cases out of which he stands acquitted in one case.

8. I have considered rival submissions addressed before this Court.
9. It is not in dispute that there is no eye-witness to the occurrence and that the prosecution relies solely on circumstantial evidence. Although it has been informed that the case was initially consigned being untraced, but it is subsequently after about 3 years of the occurrence that statements of 4 co-villagers have been recorded, who have stated that they had seen the petitioner going towards the fields of deceased on the night of occurrence. The police would certainly have a lot to explain as to why the said statements were not recorded earlier though the said witnesses are residents of the same village. As far as the medical evidence is concerned, it will certainly be debatable as to whether it is a case of suicide or a case of hanging. The last seen evidence in the shape of statements of 4 persons, which have been recorded after 3 years of the occurrence, would be required to be examined and scrutinized minutely as regards their authenticity in context of all other evidence, which

may be led by the prosecution. In any case, since challan already stands presented and the case is mainly based on circumstantial evidence, in my opinion, it is a fit case for grant of bail. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

10. It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

03.11.2021

Vimal

**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**