

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-16004-2021(O&M)

Date of decision : 29.03.2022

Amit

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Aman Pal, Advocate
for the petitioner.
Mr.Praveen Bhadu, AAG, Haryana.
Mr.Dharamveer Phour, Advocate
for the complainant.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.812 dated 19.12.2018 registered under Sections 302, 34 (Section 328 IPC added later on) at Police Station Samalkha, District Panipat.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has not been named in the FIR and the FIR has been registered on the basis of statement of one Ishwar Singh who is the cousin of the deceased and who is not an eye witness in the present case but has got the FIR registered on the basis of suspicion against Amita, i.e. wife of the deceased Dalbir and in the said FIR, it has been stated that she had murdered Dalbir along with her lover. Learned counsel for the petitioner has also submitted that the said Ishwar Singh had stated that Amita had some relationship with another person and on account of which Dalbir along with Amita and their daughter had shifted to Samalkha and on 17.12.2018, they had started residing in a rented room in Samalkha and on receiving a

telephonic message, the complainant along with his family members, had reached the rented house, where he saw the dead body of deceased Dalbir. Learned counsel for the petitioner has submitted that from the above it is apparent that FIR has been registered solely on the basis of suspicion. He has further submitted that the name of the petitioner has surfaced in the supplementary statement of the complainant who stated that he had learnt that the petitioner is also involved in the present case. He has argued that neither there is any basis nor any statement of any witness which has been recorded on the basis of which, the petitioner is sought to be involved in the present FIR. He has also argued that the highest case against the petitioner is the disclosure statement dated 24.01.2018 (Annexure P-5) and a perusal of the said disclosure statement would also show that on 17.12.2018 said Amita had informed the present petitioner that she did not want to live with Dalbir and accordingly on 18.12.2019 at 6:00 PM when the petitioner had gone to Samalkha, then again Amita had called the petitioner on telephone and informed him that she had given some intoxicating tablet to Dalbir mixed in his tea and Dalbir had slept and at about 8:00/9:00 P.M., Amita along with daughter were ready to go with the petitioner but then Dalbir suddenly got up and said Dalbir had caught the private parts of the petitioner and the petitioner in order to save himself, bit the deceased on the forehead and unfortunately the incident in question took place. He has also argued that even in case the said statement is taken on its face value then also, it is apparent that the petitioner never had an intention to kill the deceased as he had only gone to pick up Amita who did not want to live with the deceased. He has further submitted that in the present case, there are arguable points to the effect that even in case such an incident took

place, then the same was in furtherance of right of private defence of the petitioner since the said Dalbir had first attacked the petitioner. He has further stated that as per the forensic report dated 23.04.2019 (Annexure P-3), it has been found that no common poison/ drug/ ethyl alcohol was detected in the body parts of the deceased and thus, the same also causes a dent in the version as given in the disclosure statement. He has further stated that the petitioner has been in custody since 22.01.2019 and a period of more than 3 years and 2 months has passed and all the material witnesses have been examined. He has also stated that the petitioner is not involved in any other case and 6 prosecution witnesses are still to be examined and thus, any further incarceration of the petitioner would be violative of his right under the Article 21 of the Constitution of India.

Learned State counsel as well as learned counsel for the complainant have opposed the present petition for regular bail and have submitted that in the present case, motor cycle has been recovered from the present petitioner and has submitted that as per the evidence of PW-12 SI Takdir Singh, it has been stated by him that on 03.01.2019 he had gone to Railway Station Delhi and from the relevant footage, he had found that the petitioner was present along with Amita and her daughter which prima facie show that they are both living together.

Learned counsel for the petitioner, in rebuttal, has submitted that the said CCTV footage is not a part of the challan and its veracity is yet to be established. It is further submitted that even as per the said statement of said PW-12, it is not their case that the CCTV footage is with respect to the date of incident and thus, does not connect the petitioner to the murder of the deceased. It is also submitted that in fact there is no eye witness in the

present case and the case is based on circumstantial evidence.

This Court has heard learned counsel for the parties and has perused the paper book.

It is not in dispute that the petitioner has not been named in the FIR. The FIR has been registered on the statement of Ishwar Singh, on the basis of suspicion, who had stated that Amita, i.e., wife of Dalbir had murdered Dalbir along with her lover. It has been alleged in the FIR that Dalbir had taken Amita and their minor daughter to Samalkha and had started living in a rented room at Samalkha from 17.12.2018 and after the complainant had received a telephonic message, they reached Samalkha and found that said Dalbir had died. In the present case there is no eye witness and the case is based on circumstantial evidence. The petitioner is stated to have been named for the first time in the supplementary statement made by the said complainant Ishwar Singh. Further, as per the prosecution case, there is a disclosure statement suffered by the present petitioner, which has been annexed as Annexure P-5 and even, in case, the said disclosure statement of the petitioner which is the highest case of the prosecution against the petitioner, is taken into consideration then also, it prima facie shows that the petitioner had gone to pick up Amita and her minor daughter and the said Amita and minor daughter were about to go with him when said Dalbir suddenly got up and manhandled the petitioner and caught his private parts and to save the same the petitioner gave a bite on the forehead of Dalbir. The question whether the petitioner had any intention to kill or not, and whether the one alleged bite inflicted by the petitioner upon the deceased on his forehead was to defend himself or not, would be considered and adjudicated during the course of trial. The report of FSL Madhuban,

Karnal (Annexure P-3) would show that there is no presence of common poison /drug/ethyl alcohol detected in the organs of the deceased, which also causes a dent in the disclosure statement vide which as per the prosecution case, Amita had given intoxicating tablet to deceased Dalbir. Thus, in the present case whether the entire chain of circumstances is complete so as to hold the petitioner guilty or not, would be considered at the time of trial. The petitioner has been in custody since 22.01.2019, i.e., more than 3 years and 2 months and the petitioner is not involved in any other case and 6 prosecution witnesses are yet to be examined and keeping the petitioner in further incarceration would be violative of his right under Article 21 of the Constitution of India.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

March 29, 2022

Davinder Kumar

**(VIKAS BAHL)
JUDGE**