

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-16416-2022
Date of decision : 27.04.2022

Shubham Mishra

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Vivek K. Thakur, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is a second petition under Section 439 Cr.P.C. seeking regular bail of the petitioner in FIR no.22 dated 12.02.2021 registered under Sections 302, 201 IPC at Police Station Goraya, District Jalandhar Rural.

Learned counsel for the petitioner has submitted that in the present case, the FIR was registered on the statement of Ranjit Singh against unknown persons with respect to the death of Chander Bhan Mishra, who is paternal uncle of the present petitioner. It is submitted that after a delay of 4 days i.e., on 16.02.2021, the statement of Renu (wife of the deceased Chander Bhan Mishra) was recorded and in the said statement she had stated that some unidentified persons had committed the murder of her husband. The statement is annexed as Annexure P-2. It is further submitted that however, after a further delay of 2 days, a supplementary statement of said Renu was recorded on 18.02.2021 (Annexure P-3) in which she had

had killed her husband. It is also submitted that on the basis of the said statement of said Renu, the petitioner was arrested on 18.02.2021 and the recovery of a muffler and a brick was effected in pursuance of the disclosure statement made by the petitioner. It is stated that on the basis of the fact that the supplementary statement of Renu dated 18.02.2021 was contrary to the statement made by her on 16.02.2021 that the present petitioner had filed a petition under Section 439 Cr.P.C. before this Court which came up for hearing on 08.02.2022, on which date the petitioner withdrew the same with liberty to file a fresh petition after the said Renu and Dr. Rupinder Kaur are examined. It is also stated that said two witnesses have now been examined and a specific reference has been made to the statement of Renu PW-3, who in her examination-in-chief, has stated that she did not name anybody as accused and volunteered that police had told her that it was the present petitioner and Paras who had murdered her husband. Reference has also been made to her cross-examination which is also to the said effect. It is further submitted that even the muffler which was allegedly recovered in pursuance of the disclosure statement of the petitioner, has been denied by her to be the muffler of her husband. It is also submitted that the said subsequent factors are sufficient to entitle the petitioner to file the present regular bail petition. It is also stated that the petitioner has been in custody since 18.02.2021 and in the present case there are 36 witnesses out of which 4 witnesses have been examined and the trial is likely to take time. It is further stated that the petitioner is not involved in any other case and in fact is student of B.A. Part I.

The learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that in her cross-

examination, the said PW-3 Renu, has also made a statement that she had got her statement recorded before the police after making enquiry with respect to death of her husband and after knowing the reasons of the death of her husband. It is further submitted that the said witness has taken a contrary stand in her cross examination and the said aspect would finally be considered at the time of the trial. It is further submitted that there might be possibility that said PW-3 Renu has compromised the matter with the petitioner.

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

It is not in dispute that the FIR was registered by Ranjit Singh against unknown persons. Renu, who is star witness in the present case and the wife of the deceased, had given her first statement on 16.02.2021 in which she had stated that the said murder had been committed by unidentified persons. However on 18.02.2021, a supplementary statement was given by the said Renu in which she had named the present petitioner and one Paras to be the persons responsible for the death of her husband. On the basis of the said statement of Renu, the petitioner was arrested on 18.02.2021 and in pursuance of his disclosure statement, the recovery of a muffler was effected which, as per the prosecution version, belonged to deceased and which had allegedly been used in committing the murder of the deceased. A perusal of the evidence of PW-3 Renu shows that she has stated therein that the said muffler did not belong to her husband. The petitioner had earlier filed regular bail petition which was withdrawn on 08.02.2022 and on the said date, the following order was passed:-

“The present petition has been filed under Section 439

Cr.P.C. seeking bail in FIR No. 22 dated 12.02.2021 under

Sections 302 and 201 of IPC registered at Police Station Goraya, District Jalandhar Rural.

Learned State counsel has submitted that in the present case, even Renu, wife of the deceased, who has named the present petitioner as the accused, has not been examined and even Dr. Rupinder Kaur has not been examined.

Learned counsel for the petitioner, in view of the above, seeks permission of this Court to withdraw the present petition, at this stage. He has further made a prayer that since there are 35 witnesses, thus, the trial Court be directed to examine the said Renu and Dr. Rupinder Kaur at the first instance as expeditiously as possible.

In view of the statement made by learned counsel for the petitioner, present petition stands dismissed as withdrawn, at this stage with liberty to file fresh petition after examination of said Renu and Dr. Rupinder Kaur.

The trial Court is directed to examine the said Renu and Dr. Rupinder Kaur as expeditiously as possible and prior to the examination of other witnesses.

It is made clear that when a fresh application for bail would be filed, the same would be considered independently on its merits, in accordance with law.

(VIKAS BAHL)
JUDGE

February 8th, 2022

After passing of the said order, the above said two witnesses have been examined. Renu, who is the star witness, has been examined as PW-3. The relevant portion of her evidence is reproduced hereinbelow:-

“....I did not name anybody as accused who committed murder of my husband. Volunteer police told me that my husband was murdered by Paras and Shubham Mishra....

I have seen the muffler shown to me in the court today. This muffler does not belong to my husband.

At this stage, Ld. APP for the State has requested the witness is suppressing truth by resiling from her statement made to the police and by not identifying the muffler shown to her in the Court today and the witness may be declared hostile on these points and APP may be allowed to cross-examine the witness.

Request heard and allowed.

xxxxSh.Rishi Bhardwaj, Addl.PP for the State.

.... It is neither a fact nor I stated to the police that on 18.02.2021 that after staying in our native village in U.P. Shubham returned back to his home (Goraya, Punjab) and thereafter he along with one boy abducted my husband from Ludhiana on motor cycle and committed his murder near Goraya by strangulating his neck and threw his dead body in Goraya or that we enquired about this fact from Ludhiana and some other places also and after confirming this fact I got recorded my statement. Attention of the witness is drawn towards portion A to A1 of statement Ex.PW3/G where such facts are recorded but the witness has denied of making such statement before the police. Volunteered these facts with regard to the committing murder of my husband by accused Shubham and one another boy was told to me by the police. Volunteered I never witnessed any occurrence with regard to committing of the murder of my husband by Shubham along with another boy Paras. It is wrong to suggest that I told the police that accused Shubham along with some other boy committed murder of my husband by strangulating his neck in the area of Goraya by abducting him on motorcycle from Ludhiana.”

A perusal of the above evidence would show that the said star witness Renu has not supported the case of the prosecution and in fact has stated that she had not named anybody as accused persons and it was the police who had told her that her husband had been murdered by the present petitioner and Paras. The argument of learned State counsel to the effect that the said witness seems to have compromised the matter with the accused, would be an issue, which would be considered during the course of trial. The petitioner is stated to have been in custody since 18.02.2021 and the challan in the present case has already been presented and out of 36 witnesses, only 4 witnesses have been examined and thus, the trial is likely to take time. The petitioner is not involved in any other case and is stated to be a student of B.A. Part I. The earlier petition was withdrawn at that stage

on 08.02.2022, after considering the objection raised by learned State counsel to the effect that Renu and other witnesses have not been examined. The said witnesses have been examined as stated hereinabove. Renu, who is star witness, did not support the case of prosecution.

Keeping in view the above said 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.

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.

(VIKAS BAHL)
JUDGE

April 27, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No