

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

CRM-M-16230-2020 (O&M)

Date of decision: 07.03.2022

Sandeep

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Aakash Vashisth, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

(Through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

This is 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. 205 dated 11.12.2019, registered under Sections 120-B, 302 of the IPC (Section 120-B IPC deleted subsequently) at Police Station Sadar Rewari, District Rewari.

This case was heard on 04.12.2020 by the Co-ordinate Bench and the judgment was reserved. Thereafter, on 08.12.2020, the following order was passed:

“...[2]. The FIR was registered on the statement of complainant Nihal who alleged that his daughter Anju as married to the petitioner in April 2011. Son Lakshay took birth out of this wedlock who is aged 7 years. On 10.12.2019, the complainant received a telephonic call that Anju suffered injuries by falling from stairs and was admitted in Aditya Hospital. Thereafter, the complainant along with his brother Satish reached Aditya Hospital, where they were told that Anju had been referred to Artemis, Gurugram. They were not allowed to meet Anju. In the morning, they were told that Anju had died. Petitioner's side did not give any satisfactory

reply regarding cause of death. Complainant further alleged that earlier also they had asked the petitioner's side not to give beatings to Anju and on the assurance of father-in-law of Anju, they had returned to their village. Complainant further alleged that Anju was killed by throttling by the petitioner. In that killing, father-in law of Anju namely Sunil, mother Sumitra and nanandManjita were also named. On 03.12.219, Anju had come to the village of the complainant and told that the petitioner had given beating and threat of killing to her after consuming alcohol. With this background, the FIR came to be registered.

[3]. During investigation, all other accused were found to be innocent except the petitioner and challan was presented on 05.03.2020.

[4]. Disclosure statement of the petitioner was recorded on 12.12.2019, where he stated that on 10.12.2019 at about 5:30/6:00 PM, when he came to the house from tubewell, his wife was working in the kitchen. His pet dog has done shit on the floor. Petitioner asked his wife to remove the same, but Anju asked him to do the same as he was cooking meal. Petitioner became annoyed and gave slap, kick and fist blows to her. Anju fumbled and fell on the table. Thereafter, she went to the room on the roof and put kundi from inside. The mother of the petitioner saw that kundi could not be opened from inside and called the petitioner. Petitioner by going upstairs kicked the door and due to which, kundi was uprooted and he found his wife hanging with the fan with the help of chunni. Petitioner brought her down from the fan and local doctor was called telephonically for treatment. Doctor administered her an injection and thereafter, doctor asked the petitioner to take her to hospital at Rewari. Anju was brought to Aditya Hospital, Rewari, where first aid was given to her and she was referred to Artemis, Gurugram. The parents of the petitioner gave misleading statement regarding falling of Anju from the roof. Petitioner further disclosed that the chunni used in the incident was concealed by him in mustard fields and the same can be got recovered by him after demarcating the place.

[5]. Following injuries were found on the person of Anju:-

“1. On reflection of scalp, a reddish contusion of size 8.5x3.5 cm was present over the right temporo occipital region of scalp situated 1 cm above to right mastoid process. On dissection, underlying layers of scalp were ecchymosed.

2. A reddish abrasion of size 0.5 x 0.5 cm was present over the right side of forehead situated 4.5 cm right to midline and 6.5 cm above to right supraorbital margin.

3. A reddish abrasion of size 1x0.5 cm was present over the dorsum of nose situated 3 cm below to glabella and 4.5 cm above to tip of nose.

4. A reddish abrasion of size 1x0.5 cm was present over the lateral surface of pinna of left ear.

5. A reddish abrasion of size 5.5 x 3 cm was present over the left side of chin situated 3 cm left to midline

and 6 cm from left angle of mandible.

6. A reddish abrasion of size 3.5 x 2 cm was present over the lateral aspect of left arm situated 12 cm above to left elbow joint and 12 cm below to left acromion process.

7. A reddish contusion of size 2x2 cm was present over the posterior aspect of left forearm situated 11 cm above to left wrist joint and 16 cm below to left elbow joint. On dissection, underlying soft tissues were ecchymosed.

8. A reddish contusion of size 1x1 cm was present over the lateral aspect of left thigh situated 18 cm above to left knee joint and 28 cm below to left anterior superior iliac spine. On dissection, underlying soft tissues were ecchymosed.

9. A reddish contusion of size 6x2.5 cm was present over the anterior aspect of right knee joint. On dissection, underlying soft tissues were ecchymosed.”

[6]. A reddish abraded ligature mark in the form of pressure abrasion of length 13.5 cm and width varying between 1 to 2.5 cm was present over the front and right side of neck situated 1.5 cm below to chin in anterior midline.

[7]. Doctor gave the following opinion in respect of cause of death:-

"Today i.e. 01/10/2020 HC Rajan Belt No.729/RWR P.S. SadarRewari moved an application seeking opinion regarding the cause of death in the case of deceased Miss. Anju D/o Nihal Singh 29 Y/F, R/o BodiaKamalpuri. He provide the following documents of the case to undersigned:-

1. PMR of deceased vide PMR No.PME/2019/12/03 dated 12.12.2019.

2. Chemical analysis report of viscera videno. Test report/opinion RFSL (H) No.19 BH/Toxi-2201 date 11.09.2020, BH TOXI-889 duly signed by Dalbir Singh, Assistant Director (Toxicology) RFSL Sunaria. Which reports that no common poison/drug could detected in exhibits 1a, 1b, 1c and 1d.

3.Histopathological examination report of viscera vide No.Path/20/378 dated 28.03.2020 duly signed by Dr. Archana, Demonstrator, Department of Pathology PGIMS Rohtak. Which reports that brain do not show any significant pathological change, other than congestion in meningeal vessels. 4. OPD card from the Adityaneuro and spine specialty hospital trauma centre with UHID No.201924299 duly signed by Dr. S.N. Manikandan.

After perusal of above mentioned documents under signed board of doctors is of considered opinion that the cause of death in this case is ante mortem hanging and its complications. However, nine fresh injuries were observed on the body during post mortem examination other than the ligature mark. Which were antemortem in nature.

Sd/-01/10/2020

Dr. Naveen Sharma
Resident

Sd/-

Dr. Jitender Kumar Jakhar
Professor.Department of Forensic Medicine, PGIMS
Rohtak"

[8]. Bail of the petitioner was declined by the Additional Sessions Judge, Rewari on 06.06.2020 on the ground that final report under Section 173 Cr.P.C has been filed and the petitioner will face trial under Section 302 IPC and the same is likely to commence soon.

[9]. First status report was filed by way of affidavit of Mohd. Jamal, HPS, Deputy Superintendent of Police, Rewari, wherein aforesaid cause of death was mentioned.

[10]. On 04.11.2020, following order was passed by this Court:-

"The case has been taken up for hearing through video conferencing.

Status report by way of affidavit of Mohd. Jamal, H.P.S. Deputy Superintendent of Police, Rewari, District Rewari has been placed on record.

In order to appreciate the complicity of the petitioner, let a copy of challan be placed on record. Adjourned to 26.11.2020."

[11]. Thereafter, status report by way of affidavit of Mohd. Jamal, HPS, Deputy Superintendent of Police, Rewari dated 16.11.2020 was filed along with report under Section 173 Cr.P.C. The prosecution has translated portion of vernacular portion of challan in the following manner:-

".....during investigation accused Sandeep suffered disclosure statement, according to which he murdered Anju by using a chunni and later on the accused demarcated the place of occurrence and got recovered chunni which was used for hanging Anju from mustered fields adjacent to the house of the Sandeep....."

[12]. The aforesaid portion of translation was sought to be explained by Superintendent of Police, Rewari in communication addressed to Advocate General, Haryana vide endorsement No.21366 dated 01.12.2020 in the following manner:-

"On the subject noted above it is hereby informed that the undersigned has been presented with a report dated 01.12.2020 by the DSP, Rewari vide which it has been reported by the DSP Rewari that upon the analysis of the case file pertaining to the FIR aforesaid, he is of the considered opinion that no offence punishable under Section 302 IPC is made out from the evidence collected during the course of investigation. He has sought permission to further investigate the matter and submit a supplementary final report, if the circumstances may so warrant, before the Ld. Trial Court.

The undersigned has requisitioned the case file and has gone through the same carefully. After going

through the same, the undersigned is also of the opinion that after the recording of the disclosure statement of the petitioner and having perused the post-mortem examination report, the offence punishable under Section 302 IPC was liable to be dropped. The undersigned has prima facie observed negligence on the part of the investigator as well as the SHO and both of them have ordered to be dealt with departmentally vide order dated 01.12.2020 passed separately.

Your subject communication has reference to page No.13 of the reply. The same has been perused by the undersigned. The perusal of the page number 13 of the reply shows that due to inadvertence there is an error in translation and instead of the assertion that the Chunni had been used for murder, it was to be written as the Chunni that was used in the commission of the crime. The vernacular version of the challan can be perused in support of the contention.

You are hereby requested to apprise the Hon'ble High Court regarding the fact of further investigation having been ordered into the matter. However, as desired by your good offices vide communication dated 26.11.2020, an application for placing on record the relevant documents as called for is being separately uploaded on the LMS for the purpose of vetting. However it shall be in the interests of justice, if the Hon'ble High Court is apprised of the fact that further investigation has been ordered into the matter.

You are requested to kindly do the needful and apprise the office of the undersigned regarding the same, so that further necessary action may be taken accordingly."

[13]. The aforesaid communication has been sent by Superintendent of Police, Rewari to the Advocate General, Haryana in the context of order dated 26.11.2020 passed by this Court when learned State counsel sought time to verify some point arising out of vernacular of the challan viz-a-viz the disclosure of the accused/petitioner. The aforesaid communication is not in dispute.

[14]. Perusal of the aforesaid letter would show that Superintendent of Police, Rewari has opined that no offence under Section 302 IPC is made out from the evidence collected during course of investigation, however, a permission has been sought for further investigation in the matter and for filing supplementary final report.

[15]. In view of aforesaid position, this Court at this stage, cannot make any opinion whether the police can further investigate the case without leave of the Court or not. No such material has been produced on record whether any application is pending before the trial Court for seeking leave of the Court for further investigation. In any case, the police has come with a specific plea that further investigation shall be conducted.

[16]. In view of above, I deem it appropriate to grant interim

bail to the petitioner till filing of the supplementary challan by the police, subject to his furnishing adequate bail bonds and surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate. However, it is made clear that this Court has not given any opinion with regard to competence of the police to investigate further without leave of the Court or otherwise. [17]. Adjourned to 15.01.2021...”

Thereafter, the aforesaid interim order is continuing.

Learned counsel for the petitioner submits that as per the affidavit of the DSP, Rewari, supplementary challan has been presented under Section 306 IPC and now the trial Court has framed charge under Section 306 IPC with alternative charge under Section 302 IPC and, therefore, it will be a matter of trial whether Section 302 IPC is made out or not.

Learned counsel for the petitioner further submits that there are 27 prosecution witnesses cited in this case and two witnesses have already been examined and there is no allegation that the petitioner has ever misused the concession of interim bail.

Learned State counsel, on the basis of the custody certificate, submits that the petitioner remained in judicial custody for about one year prior to granting the interim bail on 08.12.2020.

Learned State counsel, on the basis of the affidavit of the DSP, Rewari as well as subsequent status report, has not disputed the fact that the supplementary challan has been presented under Section 306 IPC.

After hearing learned counsel for the parties, without commenting anything on the merits of the case, considering the fact that the petitioner was granted the concession of interim bail on 08.12.2020 and since then, a period of about one and a half year has lapsed, however, there is no allegation against the petitioner that during the said period, he has ever

misused the same in any manner and also in view of the fact that two prosecution witnesses have already been examined, the present petition is allowed and the order dated 08.12.2020, granting interim bail to the petitioner, is made absolute.

07.03.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No