

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

Date of Reserve: 21.09.2022

Date of Decision: 30.09.2022

CRM-M No.25588 of 2021 (O&M)

Satish Kumar

.....Petitioner

Vs

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vishal Garg Narwana, Advocate and
Mr. Sagar Sharma, Advocate
for the petitioner.

Mr. Minderjeet Yadav, D.A.G., Haryana.

RAJ MOHAN SINGH, J.

CRM No.25645 of 2022

For the reasons mentioned in the application, the same is allowed. Accompanying documents are taken on record, subject to all just exceptions.

Main case

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in his second attempt in case bearing FIR No.107 dated 31.07.2019, registered under Section 302 IPC at Police Station Garhi, District Jind. Earlier petition bearing CRM-M No.22845 of 2020 was got dismissed as withdrawn vide order dated 05.10.2020.

FIR was registered at the instance of Vikrant to the

effect that his sister Reena was married to the petitioner in the year 2011. His sister was blessed with two sons namely Kartik aged 7 years and Sukdheep aged 5 years. His brother-in-law (petitioner) very often used to fight with his sister Reena. Rajesh brother-in-law of the petitioner and his wife Paramjit also used to fight with his sister Reena. Petitioner was continuously fighting with his sister for the last 5 to 7 days and her sister was not even allowed to talk to the complainant-party on telephone. The complainant also alleged that in the intervening night of 30/31.07.2019, petitioner had killed Reena by strangulating her neck.

Learned counsel for the petitioner submitted that petitioner is in custody since 01.08.2019. Proceedings under Section 174 Cr.P.C. were carried out by the Police after inspection of the place of occurrence and after recording the statements of the persons acquainted with the facts by joining them in the investigation. *Dupatta* which was cut into two pieces with the help of knife was also taken into police possession. Post mortem report of Reena was conducted at Civil Hospital, Narwana on 31.07.2019. As per opinion of the Doctor, the cause of death of Reena was due to Asphyxia which is ante mortem in nature and was sufficient to cause death in ordinary course of life. Thereafter on 01.08.2019, opinion was also obtained from the Board of Doctors. As per the said opinion, the

cause of death was due to Asphyxia as per injuries mentioned in PMR whereas possibilities of above nature injuries due to violence cannot be ruled out.

Learned counsel for the petitioner further submits that the cause of death as per opinion given by the Board of Doctors was not on account of any strangulation. The confession, if at all made by the petitioner in police custody has no evidentiary value. Rajesh and his wife were found to be innocent in this case. Challan has already been submitted on 21.09.2019.

Learned counsel further submitted that father of the petitioner is on the death bed and both the minor sons are with the family of the petitioner. Petitioner is in custody for the last more than 3 years. Dr. Hardeep Kaur has been examined as PW-6. She has admitted that in case of death by hanging in eventuality, the cause of death would be Asphyxia. In the present case possibility of death by hanging cannot be ruled out. It is correct that no ligature mark or throttling was present over the dead body. Possibility of abrasion or contusion due to fall or in transit cannot be ruled out.

Learned counsel further submitted that in view of statement of the Doctor, Asphyxia due to strangulation or hanging would remain debatable. Rather Asphyxia due to strangulation had not been suggested by the Doctor. In case of Asphyxia due to hanging, dribbling of saliva marks have to be

found on the chest and clothes. As per medical jurisprudence, in case of hanging there will be a dribbling of saliva out of the mouth down on chin and chest, whereas in case of strangulation there cannot be such dribbling of saliva. The Doctor has not said anything about Asphyxia due to strangulation, rather has suggested that possibility of death by hanging cannot be ruled out.

Per contra, learned State counsel opposed the bail on the ground that the petitioner is accused of heinous offence in which he has murdered his own wife. In the confessional statement he has admitted his guilt. He was suspicious about the character of Reena as she was caught red handed while talking to someone else on mobile phone. Petitioner had destroyed the mobile phone of the deceased. Petitioner had the suspicion that his wife used to remain away from his house in his absence. Petitioner had moved neck of the deceased towards the brink of bed when she was sleeping and put *dupatta* on the neck of the deceased and thereafter he sat on her chest. He dragged neck of the deceased with pressure downwards and thereafter the movements of the deceased were stopped.

I have considered the submissions made by learned counsel for the parties.

Petitioner is in custody for the last 3 years and 2

months and both the minor sons are with the mother of the petitioner. Father of the petitioner is seriously ill and is virtually on the death bed. The complicity of the petitioner on the basis of material on record or on the basis of evidence to be led by the parties during trial would remain debatable and the same would be tested by the trial Court on merits. The trial of the case in any case would take sometime in its culmination.

At this stage, without forming any opinion on the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

September 30, 2022

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No