

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(218)

CRM-M-26665-2021

Date of Decision: 04.05.2022

Rajinder Kumar

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. G.S. Dhillon, Advocate for the petitioner.

Mr. Rakeshinder Singh Sidhu, A.A.G., Punjab.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in FIR No.29 dated 5.4.2021 registered under Sections 306, 34 IPC at Police Station, Sadar Abohar, Distinct Fazilka.

As per facts of the case, present FIR was lodged by the brother of the deceased namely Rajbir Kaur. The sum and substance of the allegations in the FIR is that the marriage of the deceased took place about nine years ago with Rajinder Kumar i.e. the present petitioner. Out of the wedlock two children aged about 6 years and 4 years were born. On 4.4.2021 the complainant was telephonically informed that his sister Rajbir Kaur had committed suicide. It was alleged that reason behind the suicide was that his brother-in-law Rajinder Kumar and his brothers Sukhjinder Singh and Subhash used to harass his sister. On earlier occasions Panchayats were also convened, however, the same proved failed as the harassment remained continued and his sister committed suicide by hanging herself. FIR was lodged to take legal action against the culprits.

The investigation commenced and during investigation rest of the accused were found innocent, however, the challan was presented

against the petitioner, who is the husband of the deceased. Petitioner was arrested on 5.4.2021. He approached learned Addl. Sessions Judge, Fazilka for grant of bail, however, after hearing the parties, the same was declined vide order dated 1.7.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. He submits that marriage in question took place about 9 years ago and out of the wedlock two children were born. Counsel submits that there was no harassment as alleged by the complainant in the FIR. It is submitted that during the period of 9 years no complaint was filed either by the deceased wife or by the complainant side. Counsel submits that a bare reading of the allegations in the FIR would not constitute the essential ingredients of Section 306 read with section 107 IPC i.e. abetment by the petitioner instigating the deceased to commit suicide. Counsel submits that the bail application of the petitioner was declined by the learned Addl. Sessions Judge, Fazilka simply on the ground that the material witnesses were not examined. Counsel has placed on record zimni orders of the Trial Court, wherein despite a number of opportunities granted by the Trial Court prosecution witnesses are not appearing intentionally only in order to prolong the trial and keep the petitioner behind bars. A perusal of zimni orders dated 29.9.2021, 29.10.2021, 7.12.2021, 6.1.2022, 11.2.2022 and 28.3.2022 would show that no prosecution witness was present. Counsel submits that conduct of the complainant side is writ large from the fact that custody of the petitioner is being prolonged only to keep him behind bars and hence the petitioner deserves to be granted bail.

On the other hand learned State counsel has strongly opposed the submissions made by counsel for petitioner and submits that there are specific allegations against the petitioner regarding harassment caused to the deceased. He, however, candidly acknowledges that despite number of opportunities granted by the Trial Court the prosecution witnesses are not appearing for their examination.

I have heard learned counsel for the parties at length and have gone through the record carefully.

The petitioner is the husband of the deceased and is being prosecuted for the offence under Section 306 IPC. Whether the offence under section 306 IPC read with section 107 IPC is made out or not would be totally in the domain of the Trial Court to conclude on the basis of appreciation of the evidence led by both the sides. However, the zimni orders produced by the counsel for petitioner would show that the prosecution witnesses are given repeated opportunities for their examination but they are repeatedly absent. The accused/petitioner has the right of speedy trial which is purportedly being denied to him. There is nothing on record to show that the petitioner has any criminal antecedents. The veracity of the allegations levelled in the FIR would be assessed only after conclusion of the trial. In the overall facts and circumstances of the case, this Court finds that counsel for petitioner succeeds in making out a case for grant of bail to the petitioner.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

04.05.2022

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No