

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

**CRM-M-29932-2021
Date of decision: 19.04.2022**

Rakesh Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. B. K. Mehta, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. C. M. Munjal, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

This 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. 98 dated 11.08.2020, registered under Sections 302 and 34 of the IPC at Police Station City Abohar-2, District Fazilka.

Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of complainant Kavita, it is stated that on 10.08.2020, her co-villager Anuj @ Dabbu came to her house and asked her brother Surinder Kumar to accompany him to Abohar. Brother of the complainant sat on the motorcycle of Anuj @ Dabbu and went away with him. Thereafter, the family of Surinder Kumar kept waiting for him upto 8:30 PM. Later on, it came to their notice that Anuj Kumar told complainant's another brother Mohinder Kumar that Vijesh Kumar, Rakesh Kumar and Amit Kumar were consuming liquor at Nand Dhaba and after consuming liquor, they had an altercation with each other and they left

Surinder Kumar near a celebration palace and thereafter, they do not know where Surinder Kumar had gone. The family of the complainant started looking for him and in the next morning, the dead body of Surinder Kumar was found.

Learned counsel further submits that as per postmortem report, the victim suffered five injuries, which were on right hand, right thigh, left hand, middle finger of the left hand and right knee joint and none of the injuries was any vital part of the body. It is further submitted that as per opinion given by the board of doctors, the death occurred due to drowning.

Learned counsel further submits that the police, after concluding the investigation, submitted the challan under Section 304-A IPC. It is further argued that the petitioner is in judicial custody for the last 01 year, 08 months and 04 days and out of total 32 prosecution witnesses, only 03 witnesses have been examined so far.

Reply, filed by way of the affidavit of the Investigating Officer, is on record. As per reply, during investigation, on the basis of the CCTV footage of Nand Dhaba, it was found that the accused persons consumed liquor and in a heavily drunken condition, they had a scuffle and even damaged the counter of the said Dhaba, due to which, the victim received injuries on his hand. Thereafter, the accused persons and deceased left the Dhaba on a motorcycle. Accused Anuj Kumar etc. tried to take the deceased along with them but the deceased, being in heavily drunken condition, did not go with them and on the next day i.e. 11.08.2020, the dead body of Surinder Kumar was found in the minor canal.

Learned State counsel submits that on the basis of the inquiry conducted by the police, the *challan* was presented under Section 304-A

IPC, however, the trial Court has committed the case to the Court of Sessions under Sections 302/34 IPC and even the charges have been framed.

Learned counsel for the complainant has referred to an order dated 31.03.2020, passed by the Additional Sessions Judge, framing charge against the petitioner under Section 302 IPC, wherein some observations have been made with regard to disapproving the *challan* submitted under Section 304-A IPC. It is further submitted that since 'last seen' evidence suggests that deceased was in the company of the petitioner, he along with other accused has committed the murder of the victim.

On a Court query that if there is any motive attributed to the petitioner or any other accused, neither the affidavit of the Investigating Officer reveals anything nor learned counsel for the complainant could state anything on the basis of the allegations in the FIR.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that the petitioner is in judicial custody for the last 01 year, 08 months and 04 days and also considering the opinion given by the board of doctors that deceased died due to drowning as well as none of the injuries was on any vital part of the body of the deceased, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned.

19.04.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*