

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-38931-2021

Date of decision : 06.12.2022

Gurmukh Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Jasraj Singh, Advocate
for the petitioner.

Mr.Tarun Aggarwal, Sr.DAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is the petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.141 dated 01.10.2019 registered under Section 302, 304 IPC at Police Station Mahilpur, District Hoshiarpur.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 28.10.2020 and in the present case, out of 14 witnesses, 8 witnesses are yet to be examined and thus, the trial is likely to take time and the petitioner is not involved in any other case. It is further submitted that the petitioner has been falsely implicated in the present case inasmuch as the death of deceased Amritpal @ Kala had occurred on 10.08.2018 and subsequent to the same, proceedings under Section 174 Cr.P.C. were initiated and the brother of the deceased had given a statement that the deceased had died on account of a heart attack. It is stated that the present FIR has been registered after a delay of more than 1

Section 304 IPC. It is further stated that the FIR has been registered on the basis of statement of Suman wife of the deceased, who has implicated the present petitioner on the basis of suspicion. It is argued that a perusal of the FIR would show that even as per the version of said Suman, it is the petitioner, who had brought back the deceased in his private car and had informed the complainant that the health of the deceased was deteriorating and he should be taken to the hospital and at that time, froth was coming out from the mouth of the husband of the complainant. It is further argued that in case the petitioner had committed the said offence, then he would not have carried said Amritpal @ Kala in his car back to the home of the complainant. It is submitted that the post mortem report dated 11.08.2018 (Annexure P-3) would show that it had been stated by the police that the deceased had died due to a heart attack and it has been further highlighted (at page 33) that it has been specifically mentioned in the said report that there is no sign of any fresh external injury present over the body and the cause of death was to be ascertained after receiving the report of the Chemical Examiner and the Histopathological report. Reference has been made to the report of the Chemical Examiner (Annexure P-4) in which it has been stated that organophosphorus compound has been detected in the contents of exhibits II, III, IV & V. Further reference has been made to histopathological report as per which it is argued that the same would reveal that it was on account of excessive cholesterol that the deceased had suffered a heart attack and thus, the initial version to the effect that the deceased suffered a heart attack would stand substantiated from the same. It is submitted that in view of the said report instead of constituting a Board, the opinion of the Medical Officer, Civil Hospital, Garshankar was taken by

the police who, reiterated the fact that the death had taken place on account of presence of organophosphorus (poison) in the body. It is further submitted that an enquiry in the present case has been conducted and in the said enquiry, the brother of the petitioner was declared to be innocent and the petitioner was implicated in the present case on the ground of suspicion alone and the version which was projected by the prosecution was that the petitioner had made tea and the petitioner and the deceased were taking tea and after that the deceased had died. It is stated that the conclusion drawn by the prosecution without there being any connecting material to the effect that it was the petitioner who had administered organophosphorus poison to the deceased by mixing the same in the tea is highly improbable inasmuch as it has been repeatedly held by various Courts that the substance organophosphorus has a very pungent smell and thus, it is impossible for someone to administer the same without the deceased coming to know about the same. Reliance in this regard has been made on the judgment of the Hon'ble Supreme Court in *Ramgopal vs. State of Maharashtra*, reported as **1972(4) SCC 625** as well as the judgment of the Rajasthan High Court in *Ashima vs. State of Rajasthan through PP* reported as **2018(2) CrL.L.R.1076**.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that it is the present petitioner who is the sole accused in the present case and it is the petitioner who had last taken the deceased along with him and the deceased got back also in the car of the petitioner and during the course of investigation and enquiry, it has been found that it was the present petitioner who had mixed the intoxicant tablets i.e., organophosphorus (Poison) in the tea of the

deceased. Learned State counsel has placed on record the custody certificate as per which the custody period as well as the fact that the petitioner is not involved in any other case, stands reaffirmed.

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

Amritpal @ Kala died on 10.08.2018. It is not in dispute that in the enquiry proceedings under Section 174 Cr.P.C., the brother of the deceased had stated that the deceased had died on account of a heart attack. The FIR in the present case was registered after a delay of more than 1 year and 1 month i.e., on 01.10.2019 and the same was registered under Section 304 IPC and not under Section 302 IPC on the basis of statement given by Suman wife of the deceased. A perusal of the said FIR would show that the petitioner has been made as accused on the basis of suspicion and further perusal of the FIR would show that as per the case of the complainant-Suman, it was the present petitioner who had brought the deceased back to the house of the complainant by placing him on the rear seat of his private car and informed the complainant that the health of the deceased Amritpal @ Kala was deteriorating and then he was taken to the hospital and froth was coming out from the mouth of the husband of the complainant. The argument raised by learned counsel for the petitioner that in case the petitioner had committed the alleged crime then he would not have brought the deceased back to the house of the complainant, cannot be outrightly rejected. A perusal of the post mortem report (Annexure P-3) would show that it has been stated at page 32 of the paper book that as per the information provided by the police the deceased died due to heart attack and at page 33 of the paper book it has been specifically stated that there is no

sign of any fresh external injury mark present over the body of the deceased and at page 35 of the paper book it had been stated that the cause of death would be determined after receipt of the chemical examiner report and histopathological report. A perusal of the chemical examiner report would show that organophosphorus compound has been detected in the contents of exhibits II, III, IV and V which were sent with respect to the deceased. The Hon'ble Supreme Court of India in **Ramgopal's** case (supra) has held as under:-

“18. The evidence with regard to the alleged administration of poison has left many gaps in the case. There is no evidence whatsoever that the appellant had any Organo Chloro compound in his possession. In Taylor's Principles and Practice of Medical Jurisprudence Vol. II Twelfth Edition we have a section on Chloro compounds at pages 451 to 453. It appears that many chloro compounds have been synthesized as insecticides and posticides. The more common disinfectors are : (1) D.D.T. (1) Gammexane Lindano (3) Benzene hexachloride, (4) Pentachlorophenol, (5) Aldrin, (6) Chlordan, (7) Dieldrin, (8) Endrin etc. It is said that these insecticides and pesticides are easily available in the market. As the book notes, all these are strong stomach and contact poisons to insects. They are not highly poisonous to man though they can be absorbed readily through the skin. Acute poisoning may occur when a chloro compound like DDT. is taken in considerable dosage by mouth, especially when dissolved in certain organic solvents. In sub slethal dosage gastro-enteritis and vague nervous symptoms develop rapidly and pass off with equal rapidity irrespective of treatment. It is further noted that in lethal dosage, as in suicides or in children drinking concentrates by accident, death can follow within an hour in convulsions. The learned author further observes : "It is possible, therefore, to absorb a fatal dose suicidally but it is not likely to occur accidentally, or to be used with intent to murder. A number of Cases have occurred in which substances of this class have been administered with intent to injury or annoy.

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21. Neither Dr. Deshpande nor Mr. Sarote impressed us as authorities on the subject of organo chloro compounds or their effects as poisons on the human system. Pesticides are very commonly used in households. Pesticides like D.D.T., Gammexane etc. are easily available in the market and are used for various purposes, especially, in urban households. The possibility of the same being found in the human system is not completely eliminated. Mr. Sarote has not measured the quantity actually found in the viscera and that in our opinion is a serious deficiency in the present case. We have already referred to Talor's opinion that it was possible to absorb a fatal dose suicidally but it is not likely to occur accidentally, or to be used with intent to murder. The reason obviously is that the taste or the smell is so repulsive especially when taken with kerosene as solvent, that unless it is self administered as in the case of suicide it would neither be swallowed either by accident or used with intent to murder."

Further in the judgment of **Ashima's** case (supra), the Rajasthan High Court has held as under:-

"7. Learned counsel for the petitioners has given thrust mainly upon the following :-

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(iv) Nature of poison organo-phosphorus poison (Sulfas) is highly reactive, pungent, emanating offensive smell and its mixture with liquid, leaves fumes, so, it is not possible that it could be given to anybody in clandestine way, without notice of the victim and has relied upon following precedents :-

- (i) *Ram Gopal v. State of Maharashtra* (1972) 4 SCC 625
- (ii) *Jasbir Kaur v. State of Punjab* AIR 1993 SC 151
- (iii) *Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.* (1998) 5 Supreme Court Cases 794
- (iv) *Rosy and Anr. v. State of Kerala and Ors.* (2000) 2 SCC 230
- (v) *Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors.* (2007) 12 SCC 1
- (vi) *Harishchandra Prasad Mani and Ors v. State of Jharkhand and Anr.* (2007) 15 SCC 494
- (vii) *Sonali Mukherjee v. Union of India* (2010) 15 SCC 25
- (viii) *Vikas v. State of Rajasthan* (2014) 3 SCC 321
- (ix) *Bhagwan Sahai Khandelwal & Ors. v. State of Rajasthan & Anr.* (2006) 2 WLC 239,

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12. Significant it is that a pungent foul emanating smell object, cannot be administered in a clandestine way and assertions to this effect are always doubtful. Supreme Court in [Ram Gopal v. State of Maharashtra](#) (supra), while dealing with a case of organochloro poison, has observed as under :-

Medical Jurisprudence - Poisoning - Consumption of pesticides or insecticides - Fatal dose of pesticide can be absorbed suicidally but it cannot occur accidentally or be used with intent to murder because of its repulsive taste or smell especially when taken with kerosene as solvent - A large quantity of poison such as D.D.T. in emulsion form would have to be imbibed before death may result - Many Chloro compounds have been synthesized as insecticides and pesticides which are available in market - If vomiting takes place immediately after administration of Organo Chloro compound in liquid form, traces of that compound will be found in the vomit.

13. Autopsy report does not reveal any injury on the corpus of the deceased, this aspect is fortified by the "parcha surat haal" laash (memo of status of the corpus) that motbirs/panch also did not find any kind of injury on the body of the deceased, as such allegation pertaining to administration of poison, per force, does not sustain, more so, the law as dealt above, rules out theory of administration of organochloro-phosphorus poison clandestinely or per force, learned court below has ignored this aspect, while passing order to take cognizance. Supreme Court, while dealing this aspect in [Sonali Mukherjee v. Union of India](#) (supra), has observed as under :-

The only two other possibilities of the introduction of the tablets to Biswajit could be the forcible opening of his mouth by the accused and putting the tablets into his mouth and compelling him to swallow the same or, secondly, Biswajit himself taking the tablets. It must be noted here that when we see the (7 of 9) [CRLMP-1615/2011] medical evidence and more particularly, the injuries described by Dr. Sahay, there is no injury on the face of Biswajit. The injuries were on the other parts of the body and they were extremely insignificant injuries. At least the injuries nowhere suggest that his mouth was forced open and then the tablets were put into his mouth compelling him to swallow the same. That does not appear in the tenor of evidence of Subbash Dass (PW 5). For that matter, if we accept the evidence of Subbash Dass (PW 5) on the aspect as to what exactly happened on that night in that room, then there would be no other view possible except to exonerate Assadid Poddar (A-2) at least insofar as the introduction of the tablets to Biswajit is concerned. The witness very clearly says that all the time till the door was closed, Assadid Poddar (A-2) was outside and it was only Sonali Mukherjee (A-1), who was with Biswajit, and this aspect has further been dealt in [Jasbir Kaur v. State of Punjab](#) (supra):-

"..it is difficult to conclude that a deadly dose of poison was mixed in the tea. The deceased would not have consumed the entire tea if poison was

present in the same since it would have been bitter and emitting unpleasant smell. That gives scope for a possibility of the deceased having consumed something later. Therefore the cause of death cannot directly be the result of consuming the tea. Thus there are many missing links in the prosecution case seeking to establish that it was a case of murder. Accordingly the appeal is allowed. The conviction and sentence passed against the appellant are set aside. If she is on bail, her bail bonds shall stand cancelled.”

On the basis of the above-reproduced judgments, learned counsel for the petitioner has submitted that it is highly unlikely that the deceased would not come to know that he has been administered organophosphorus compound on account of its pungent smell etc. and the said poisonous compound is normally found in cases of suicide and not in cases of murder. The said argument along with other arguments raised would be considered finally during the course of trial. It is not in dispute that in the present case, an enquiry was conducted and as per the enquiry report dated 08.06.2020 (Annexure P-7), the brother of the petitioner was found innocent and the petitioner was however, found to be involved in the present case. The relevant portion of the said enquiry report is reproduced hereinbelow:-

“From the investigation, this thing has been found that deceased Amritpal who had gone to the house of Gurmukh Singh and others regarding the execution of deal of land Gurmukh Singh and others. Gurmukh Singh may have an enmity with Amritpal over the commission of the land deal and the sale of the land at a very high price, as a result of which, Gurmukh Singh somehow poisoned Amritpal in any way, in consequence thereof he died later on, but Gurmukh Singh still to be arrested. Therefore, Gurmukh Singh after being included in the investigation he needs to be interrogated deeply, so that truth can come out.”

It is the argument of learned counsel for the petitioner that even the above said finding in the enquiry report is not in affirmative terms. The

argument raised by learned counsel for the petitioner raises several debtable issues in the present case and the said arguments would be finally adjudicated during the course of the trial.

Keeping in view the above said facts and circumstances and also the custody period undergone by the petitioner and also the fact that out of 14 witnesses, 8 witnesses are yet to be examined and thus, the trial is likely to take time and the petitioner is not involved in any other case, 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.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

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

December 06, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No