

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-35868-2022 (O&M)
Date of Decision:-21.10.2022

Ashok Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Ms. Simsi Dhir Malhotra, Advocate for the petitioner.

Ms. Swati Batra, DAG, Punjab,
assisted by ASI Ashok Kumar.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered vide FIR No.228, dated 27.9.2020, Police Station Model Town, District Hoshiarpur, under Sections 302 and 201 of Indian Penal Code.
2. The FIR was lodged at the instance of Ajay Kumar, wherein it is alleged that his wife Prem Lata (deceased) was having illicit relations with Ashok Kumar (petitioner) and that although he had tried to reason out with Ashok Kumar but to no avail. It is alleged that subsequently there was some kind of dispute between complainant's wife and Ashok Kumar and they used to quarrel with each other over phone. It is alleged that on 26.9.2020 at about 12:00 noon,

Ashok Kumar called complainant's wife to Piplanwala and accordingly complainant's wife went on Aactiva Scooter bearing registration No.PB-07-BU-3058 but did not return back. Thereafter, when complainant and his brother-in-law Ram Pal went to look out for complainant's wife to Ashok Kumar's house, they found scooter of complainant's wife parked in the courtyard of the house. Upon inquiries made from Ashok Kumar, he did not furnish any specific reply. After lodging of the FIR, the petitioner was arrested. During the course of interrogation, he got the dead body of Prem Lata recovered and also a blood stained '*kirpan*' and two mobile phones of the deceased.

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and that the falsity would be evident from the fact that the complainant Ajay Kumar i.e. husband of deceased had absolutely resiled from his statement when he was examined by the Court. Learned counsel, in this regard, has drawn the attention of this Court to the statement of Ajay Kumar (Annexure P-5). The relevant extract of which reads as follows:

“Stated that I am driver by profession. The name of my wife is Prem and we have two children. On 26.9.2020, my wife went on scooty, somewhere and said to me that she would comeback after half an hour. However, she did not come. Then I received a telephone call from the police on evening time. I do not know who murdered my wife. I cannot identify the accused, produced today though V.C. I do not know who committed the murder of my wife. I cannot identify the accused, who has been produced through V.C. today in the court. He is not the person, who committed the murder of my wife.”

4. Learned counsel for the petitioner has further submitted that the police had resorted to padding evidence and had also got the statement of one Prem Singh recorded during the course of investigation to the effect that the petitioner had confessed his guilt before him but even the said witness resiled from his statement when he was examined before the Court. Learned counsel has referred to the statement of PW-2 Prem Singh annexed as Annexure P-6, wherein he has categorically stated that no person had ever come to him or had made any extra judicial confession before him. The petitioner thus prays for grant of regular bail.
5. Opposing the petition, learned State counsel has submitted that the petitioner has been able to win over the witnesses and that since there is scientific evidence to establish the complicity of the petitioner in the shape of DNA examination report and infact it was on the disclosure statement of the petitioner himself that the dead body of complainant's wife and weapon of offence were recovered, no case for grant of bail is made out. Learned State counsel has, however, informed that the petitioner has been behind bars since the last 2 years and 20 days and that the petitioner otherwise has a clean record.
6. This Court has considered the rival submission.
7. The star witness of the prosecution i.e. the complainant has virtually given a clean-chit to the petitioner. Even the witness pertaining to extra judicial confession has resiled from his statement. Though the prosecution may still be able to establish its case on the basis of scientific evidence or from the factum of recovery of dead body of deceased at the instance of the petitioner but this Court cannot lose sight of the fact that the petitioner has been behind

bars for a substantial period of more than 2 years and otherwise has a clean record. In these circumstances, further detention of the petitioner will not serve any useful purpose as conclusion of trial is likely to consume time. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

21.10.2022

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No