

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 06.12.2022

(1) CRM-M-38993-2022

Manoj Kumar Petitioner

V/s

State of Punjab ...Respondent

(2) CRM-M-39157-2022

Rakesh Kumar Petitioner

V/s

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ashok Kumar Khunger, Advocate,
for both the petitioners.

Ms. Ramta Chaudhary, DAG, Punjab.

Mr. G.B.S. Gill, Advocate, for the complainant.

JASJIT SINGH BEDI, J. (Oral)

This order shall dispose of both the above-mentioned petitions as both the petitions pertain to the same FIR i.e. FIR No.45 dated 10.05.2022 under Sections 304/34 IPC and Sections 27/61/85 of the NDPS Act, 1985 registered at Police Station Bahavwala, District Fazilka.

2. The present FIR came to be registered at the instance of Amarjit Singh son of late Harnam Singh, who stated that he was running a Karyana shop in the village. He had two brothers and three sisters, all of whom were married. His brother Sukhdev Singh was an agriculturist and fell in the company of drug addicts. He received a telephonic information from one

Civil Hospital, Sitto Gunno. On reaching the Hospital, he was told by the Doctor that his brother-Sukhdev Singh (since deceased) was brought dead to the Hospital. On an enquiry, he believed that his brother-Sukhdev Singh had been brought to village Himmatpura by Manoj Kumar son of Atma Ram (petitioner in CRM-M-38993-2022) and Rakesh Kumar son of Shagan Lal (petitioner in CRM-M-39157-2022) and both of them had given him an excessive dose of intoxicating substances due to which his brother-Sukhdev Singh had died.

Pursuant to the registration of the FIR, during investigation, the name of Kulwant Singh son of Surjan Singh came up and he was nominated as an accused vide DDR No.43 dated 10.05.2022 and an offence under Section 27 of the NDPS Act was added in the FIR vide DDR No.38 dated 11.05.2022.

The post-mortem of the deceased-Sukhdev Singh was conducted on 11.05.2022. On receipt of the report of the Chemical Examiner, it was reported that no poison was detected and therefore, the cause of death as given by the Board of Doctors was as under:-

“In the opinion of Board of Doctors the cause of death in this case is asphyxia due to choking which is sufficient to cause death in ordinary course of nature”.

The dope test of the accused Manoj Kumar, Rakesh Kumar and Kulwant Singh was got conducted from Civil Hospital, Abohar. While the test report of Rakesh Kumar was negative, the test reports of the accused-Manoj Kumar and Kulwant Singh were positive.

3. The learned counsel for the petitioners-Manoj Kumar (in CRM-M-38993-2022) and Rakesh Kumar (in CRM-M-39157-2022) contends that

of any contraband was effected from them. As per the Chemical Examiner report, no poison was detected in the viscera and the cause of death was “*asphyxia due to choking*” , therefore, the culpability of the petitioners could not be established. Even otherwise, the petitioners were in custody since 10.05.2022 and since none of the 31 prosecution witnesses had been examined so far, the further incarceration of the petitioners was not required and they ought to be granted the concession of regular bail.

4. The learned counsel for the State, on the other hand, contends that the statement of Vijay Laxmi, wife of the deceased-Sukhdev Singh, was recorded, as per which all the three accused including the present petitioners knew the deceased. In fact, on the date of the occurrence, the deceased-Sukhdev Singh had gone away with the petitioners. Subsequently, he was found dead. She contends that the evidence against the petitioners establish that they had, in fact, provided intoxicating substances to the deceased on account of which he died of an overdose. She however, does not dispute the period of custody undergone by the petitioners, as also the stage of the Trial.

5. I have heard the learned counsel for the parties.

6. A perusal of the FIR would reveal that the petitioners have been named on the basis of suspicion. On their arrest, no recovery of any intoxicating substance was effected from them. The deceased is said to have died on account of an “*asphyxiation due to choking*”. It would be a matter of adjudication during the course of Trial as to whether the said *asphyxiation* was caused on account of any ingestion of an intoxicating substance. At this stage, the petitioners have been in custody since 10.05.2022 and none of the 31 prosecution witnesses have been examined so far. Therefore, the Trial of the case is not likely to be concluded anytime soon. Even otherwise, the

consumer of intoxicating substances as per the dope test conducted upon the accused. In view of these facts, the further incarceration of the petitioners, namely, Manoj Kumar (in CRM-M-38993-2022) and Rakesh Kumar (in CRM-M-39157-2022) is not required.

8. Thus, without commenting upon the merits of the case, the present petitions are allowed and the petitioners, namely, Manoj Kumar (in CRM-M-38993-2022) and Rakesh Kumar (in CRM-M-39157-2022) are ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. The petitioners shall appear on the first Monday of every month before the local police station till the conclusion of the trial and furnish an affidavit each time that they are not involved in any crime other than the referred to hereinabove.

(JASJIT SINGH BEDI)
JUDGE

December 06, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No