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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-47136-2022 (O&M)
Decided on: 14.11.2022

Yashpal @ Shanty

.... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.S. Mor Advocate
for the petitioner.

Mr. Naveen S. Panwar, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

The present is a second petition filed under Section 439 of Code of Criminal Procedure for seeking grant of regular bail in case FIR No.380 dated 15.08.2020, under Section 302 IPC (Section 120-B IPC added later on), registered at Police Station City Bahadurgarh, District Jhajjar.

It has been submitted by learned counsel for the petitioner that he had filed the first bail petition, which was dismissed as withdrawn on 19.04.2022 vide Annexure P-3 in view of the fact that at that point of time, the learned State counsel has submitted that the DNA report is still awaited. He further submitted that now the DNA report has been received and attached as Annexure P-4. He also submitted that as per the DNA report, no conclusive opinion has been given by the experts. He further submitted that the petitioner is in custody for 2 years and 3 months i.e. from 20.08.2020 and 12 out of 28 witnesses have already been examined. He also submitted that the only eye-

witness, who was a child, was examined but he did not supported the prosecution version and was declared hostile. He further submitted that it is a case which is based upon the circumstantial evidence and allegedly one helmet was recovered from the spot but no link could be established even on the basis of the Forensic Expert Report with regard to the present petitioner. He also submitted that the complainant, namely, Sangeeta at whose behest the present FIR was lodged, was thereafter nominated as an accused and has since been released on bail by the learned trial Court. He further submitted that as per the prosecution story, the petitioner had extramarital relation with the aforesaid Sangeeta and that was the motive behind the killing of the deceased person. He however pointed out to the deposition of the father of the Sangeeta vide Annexure P-6 wherein he stated that no complaint was received rather he had stated that his daughter Sangeeta and Sarita, who is the sister of the present petitioner are teachers in Sainik Public School, Bahadurgarh from last many years and they have visiting terms with the family of Sarita and no complaint was made by the in-laws family of Sangeeta regarding her character. Married life of Sangeeta and deceased Pradeep was normal and there was no dispute between them. He further submitted that in view of the aforesaid factual position, no link could be established between the petitioner and the occurrence. He also submitted that the petitioner is not involved in any other case and is not a habitual offender. He further submitted that be that as it may, now the petitioner has suffered incarceration for 2 years and 3 months which is a long custody, and therefore, he may be considered for the grant of regular bail

On the other hand, Mr. Naveen S. Panwar, learned DAG, Haryana,

has submitted that it is correct that the petitioner has faced incarceration for 2 years and 3 months and he is not a habitual offender. He further submitted that it is also correct that the material witnesses have already been examined including the eye-witness, who was a child and also the father of the complainant. He has also stated that the other co-accused, namely, Sangeeta has been granted regular bail by the learned trial Court. He has however submitted that although according to the DNA report no conclusive opinion could be drawn by the forensic expert but since the matter is serious in nature, the petitioner does not deserve the concession of regular bail.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for 2 years and 3 months and all the material witnesses have been examined. The co-accused, namely, Sangeeta has already been released on bail by the learned trial Court. The second petition for grant of regular bail would be maintainable in view of the fact that earlier the petitioner had withdrawn the bail petition because the DNA report had not been received now the DNA report has been received according to which, no conclusive opinion could be drawn. Apart from the above, it is not the case of the State that in case the petitioner is released on bail then he may abscond or flee from justice or may influence any witness. Therefore, considering the aforesaid facts and circumstances and especially the fact that the petitioner has suffered the long custody and the material witnesses have already been examined, this Court deems it fit and proper to grant bail to the petitioner.

Consequently, the present petition is allowed. The petitioner shall be released on bail subject to the appropriate terms and conditions to the

satisfaction of the trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

14.11.2022

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |