

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

205

CRM-M-52428-2021 (O&M)

Date of decision :12.09.2022

Gauri Shankar

.....Petitioner

VERSUS

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present:- Mr. Deepinder Brar, Advocate, for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

MANJARI NEHRU KAUL, J. (Oral)

This is second petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.02 dated 05.01.2020 lodged under Sections 302/34 PC, registered at Police Station Sadar Bathinda, Punjab.

Learned counsel submits that subsequent to the withdrawal of the previous petition seeking similar relief on 11.02.2021 as many as 5 prosecution witnesses, out of the 18 cited, stand examined which also includes the complainant.

Learned counsel appearing for the petitioner *inter alia* contends that Mukesh Saini (hereinafter called deceased) died on 03.01.2020 due to electrocution. In the FIR in question which was registered by the brother of the deceased on 05.01.2020, neither was the petitioner named nor any suspicion by way of even a whisper raised by the complainant qua the involvement of the petitioner in the alleged murder of the deceased. It was two days later, on

Cr.P.C., nominated the petitioner as an accused and spelt out the alleged motive for him to commit crime which as per the prosecution was that the deceased was being asked by the petitioner not to interact with a female colleague of theirs. Learned counsel has vehemently argued that the case rests on circumstantial evidence and no qualitative evidence has been collected by the Investigating Agency with respect to the alleged motive on the part of the petitioner to commit the crime in question as there was no witness of last seen nor even any extra judicial confession made by the petitioner. Only a recovery of a blade which was allegedly used to inflict injuries on the deceased had been shown to have been effected alongwith a photocopy of the Adhar card of the deceased, pursuant to the disclosure statement of the petitioner. Learned counsel has further invited the attention of this Court to the deposition of the complainant who stepped into the witness box as PW3. He has urged that a perusal of the same leaves no manner of doubt about the false implication of the petitioner on misguided suspicion as not only was the complainant declared hostile on certain material aspects by the prosecution but during the cross-examination done on him, the complainant admitted that neither had he ever met the petitioner prior to the crime in question nor did he have any knowledge about the petitioner, and it was only the police who had shown him and also disclosed the name of the petitioner to him. It has been thus argued that all these circumstances when seen in totality raise a big question mark about the authenticity of the prosecution version. Learned counsel has still further submitted that the petitioner has been in custody for close to 3 years having been arrested on 05.01.2020 and there is no likelihood of the trial concluding in the near future as 13 prosecution witnesses remain to be examined, hence, he be extended the concession of bail as his

witnesses already stand examined.

Per contra, learned State counsel while opposing the prayer of the counsel opposite has submitted that the deceased was inflicted injuries with a blade by the petitioner before being electrocuted. He has further submitted that the recovery of the blade and photocopy of the Adhar card of the deceased from the petitioner, pursuant to his disclosure statement left no manner of doubt about the deceased having been murdered by the petitioner.

I have heard learned counsel for both the parties and perused the relevant material on record.

The learned State counsel has not been able to controvert the following submissions made by the counsel opposite :

- (i) that the complainant was declared hostile on certain material aspect i.e. injuries found on the person of the deceased and date of arrest of the petitioner.
- (ii) that other than recovery of a blade and photocopy of the Adhar card of the deceased, pursuant to the petitioner's disclosure statement, no other evidence much less evidence of last seen was collected by the investigating agency.

In the facts and circumstances as enumerated hereinabove, this Court deems it fit to extend the concession of regular bail to the petitioner. The petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

12.09.2022
anil

(MANJARI NEHRU KAUL)
JUDGE

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

ANIL KUMAR
2022.09.14 10:10
I attest to the accuracy and
integrity of this document