

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

106+211

**CRM-15174-2022 in/and
CRM-M-52815-2021 (O&M)
Date of Decision: 10.05.2022**

DIGAMBAR @ DIGGO

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Gautam Dutt, Advocate
for the applicant-petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

CRM-15174-2022

Instant application has been filed Section 482 of the Cr.P.C. for exemption from filing the certified copy/true typed copy/photocopy of statement dated 15.02.2022 and place on record the said statement as Annexure P-4.

For the reasons mentioned therein, the instant application is allowed as prayed for subject to all just exceptions.

Document Annexure P-4 is ordered to be taken on record. The Registry is directed to tag and page mark the same at appropriate place of the paper book.

MAIN CASE

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case bearing FIR No.130, dated 19.12.2020 under Section 302 and 120-B of the Indian Penal Code, 1860, registered at Police Station Bahin, District Palwal.

As per the case of prosecution, the FIR in question was registered at the instance of one Sourav @ Seenu. It was stated by the said Sourav @ Seenu (now co-accused) that on 13.12.2020, he came to know at around 7.00 a.m. that his grandmother Indro @ Indra @ Indrawati had passed away and that no suspicion or allegation had been levelled in the said complaint. Postmortem examination of the deceased was got conducted and as per the opinion of the Board of Doctors, the cause of death is asphyxia as a result of compression force around the neck due to strangulation that was sufficient to cause death in ordinary course of nature.

Learned counsel for the petitioner contends that the petitioner was apprehended in another case bearing FIR No.122 dated 21.12.2020 registered at Police Station Bahin under Section 25-54-59 of the Arms Act, 1959 and on the basis of a disclosure recorded in the said case, the petitioner was also taken in custody in the instant case. It is pertinent to point that the police had also recorded a statement of one Karambir as the last-seen-account witness. The said witness has claimed that the petitioner had told him about having committed the murder of Indro @ Indra @ Indrawati and that the petitioner had threatened that in case he would tell about this to any other person, he would be eliminated.

Learned counsel for the petitioner has submitted that it is a case of 'no eye witness' at all and that the petitioner is being sought to be roped in the instant case on the basis of the alleged 'last seen account' of the said witness, who had not only appeared before the police at a very later stage and that too after the petitioner was already in custody in another case but also that no valid explanation has been tendered as to why the said witness did not appear before the police/investigating agency to get his statement recorded. Invariably, there was no occasion for the petitioner to have extended the threat to the said witness when the petitioner was already in custody of police and had allegedly made disclosure statement as regards his involvement in the murder of Indro @ Indra @ Indrawati. Moreover, there is also no reason that as to why the petitioner would approach the said Karambir and disclose to him anything about having committed any act/offence. He further submits that the petitioner is in custody since 22.12.2020 and only three witnesses have been examined so far. It is also claimed that no recovery has been effected from the petitioner pursuant to the alleged disclosure statement and as such, the confession so made would be inadmissible in evidence being hit by Section 27 of the Indian Evidence Act.

Per contra, learned State counsel opposes the prayer and submits that the petitioner has criminal antecedents and is involved in other cases as well. It is also alleged that the petitioner has confessed the commission of crime by him. He further submits that the trial has not been delayed at this point, rather due to pandemic, the pace of the trial has slowed

down. The prosecution has already examined three witnesses out of total 30 cited witnesses. Learned State counsel further contends that the motive attributed for the commission of offence is that Sourav @ Seenu – the co-accused in the instant case, had offered to pay a sum of Rs.1,00,000/- each to the petitioner Digambar @ Diggo as well as Kare. It is stated by the respondent-State that the house in question was in the name of the grandmother, however, he fairly submits that there is no such document on record to substantiate the said stand. Furthermore, learned State counsel could not controvert the assertion of the petitioner that he has already been released on bail in the other cases that have been registered against him. Moreover, it is also not in dispute that no recovery pursuant to the disclosure statement has been effected from the petitioner. The case of the prosecution is based on circumstantial evidence and on the testimony of PW Karambir, who has already been examined before the Trial Court.

Taking into consideration the aforementioned circumstances and also the fact that the petitioner has been in custody for nearly one and a half year i.e. since his arrest, and that the trial is based on circumstantial evidence and that the chain of events is to be seen at the time of trial, I deem it appropriate to allow the instant petition.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of Trial Court/Duty Magistrate, concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or

indirectly.

The observation made hereinabove shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of available material.

(VINOD S. BHARDWAJ)
JUDGE

10.05.2022
rajender

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*