

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(226)

CRM-M-54635-2022

Date of decision:- 19.12.2022

Mushtak Ali

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ram Pal Verma, Advocate for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana for State-respondent.

SUVIR SEHGAL, J. (ORAL)

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of post-arrest bail in case FIR No.559 dated 26.11.2019, registered for offence under Section 346 of the Indian Penal Code, 1860 (for short "IPC"), however, later on Sections 201, 346 and 302, IPC were added, at Police Station Sadar, Sonipat, District Sonipat.

Case of the prosecution is that FIR has been registered on the statement of Samina, wife of the petitioner, on the allegation that on 23.11.2019, her husband along with their three children, aged 13 years, 11 years and 03 years, left for her in-laws house on a motorcycle. On coming to know that they did not reach their destination, she searched for them, but did not succeed and lodged the complaint.

Counsel for the petitioner submits that on the basis of a supplementary statement recorded by the complainant fifteen days later, on 11.12.2019, the petitioner has been implicated for murdering his three children by throwing them in a canal. Counsel contends that the story put forth by the prosecution is highly improbable. He urges that while travelling, the motorcycle met with an accident and the petitioner along with his three children fell in a canal, though the petitioner managed to save his life, but he could not locate his children. Counsel submits that the earlier petition bearing CRM-M-26742-2020, preferred by the petitioner, was withdrawn on 18.08.2021 after arguments, as the complainant had not been examined. By referring to the testimony of the complainant, recorded on 01.10.2021 as well as her brother, Annexures P-1 and P-2, respectively, he contends that both the witnesses have not supported the case of the prosecution. Counsel submits that the petitioner, who is in custody since 12.12.2019, deserves to be enlarged on bail.

Per contra, learned State counsel, upon instructions from SI, Ravinder, has opposed the petition and has submitted that the dead bodies of the three children were recovered from the canal, postmortem was conducted and it was found that they had died due to drowning. Still further, she has instructions to state that the mobile phone, helmet and bike were recovered from a distance of about 200 meters from the place of alleged occurrence and the bike was in an undamaged condition. She submits that eleven out of twenty seven prosecution witnesses have been examined.

Having heard counsel for the parties, noticing the custody period of thirty six months and the stage of the trial, this Court is inclined to accept the prayer made in the petition. The involvement of the petitioner in the alleged offence would be analysed by the Trial Court in due course. The arguments raised by the counsel for the parties do not deserve any comment at this stage.

Petition is allowed.

Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate concerned.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

19.12.2022

Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No