

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

Criminal Misc. No.M-55535 of 2019(O&M)

Date of Decision: March 29, 2022

Kuldeep Chand

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Birinder Singh Khehar, Advocate
for the petitioner.

Mr.R.S.Khaira, AAG, Punjab.

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HARINDER SINGH SIDHU, J.

The petitioner has filed this petition under Section 439 Cr.P.C for grant of regular bail in case FIR No.27 dated 09.02.2019 under Sections 302 IPC, Police Station City Phagwara, District Kapurthala.

On 02.09.2020, the petitioner was directed to be released on interim bail. The following order was passed:

“CRM-M-55535 of 2019:

On August 24, 2020, the following order had been recorded:-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

Mr. Khehar, learned counsel for the petitioner (in CRM-M-55535- 2019), submits that firstly, even the version given in the FIR is wholly inaccurate and in fact mischievous, because even as per the call detail records obtained, the conversation between the brother of the petitioner and the petitioners' mother-in-law was to the effect that the deceased Meena Rani had died with her heart having stopped; and nothing was said to the effect

that Kuldeep Chand, i.e. the petitioner, had killed her.

He next submits that even the post-mortem report reveals neither any injury at all on the body of Meena Rani, nor does it show any sight of poisoning as has been specifically stated by the board of doctors, with the Board also having opined that death being caused due to an underlying lung disease cannot be ruled out.

He submits that other than that, the immediate cause of the death has not even been commented upon by the doctors, with the petitioner now having remained in custody for the past 1½ years.

Upon the aforesaid contention raised, when this court was inclined to admit the petitioner to bail, learned State counsel seeks time to take instructions as to whether any other medical opinion has been obtained, if available with the investigating agency, other than the aforesaid opinion of the board of doctors.

On his request, adjourned to 31.08.2020.

At this stage, Mr. Khehar further submits that in the connected petitions, i.e. CRM-M-36813 of 2019 and CRM-M-9150 of 2020, an allegation has also been made of a demand for dowry against the petitioners' family, about which there is not a word in the FIR; and consequently, obviously that allegation is wholly an afterthought to try and ensure that the petitioner and his family do not obtain bail.

Naturally, that would be duly taken into consideration on the next date of hearing.

A photocopy of this order be placed on the file of the other connected case.”

Thereafter, on 31.08.2020, the following order had been passed:-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

On 24.08.2020, the following order had been passed:

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

Mr. Khehar, learned counsel for the petitioner (in CRM-M-55535- 2019), submits that firstly, even the version given in the FIR is wholly inaccurate and in fact mischievous, because even as per the call detail records obtained, the conversation between the brother of the petitioner

and the petitioners' mother-in-law was to the effect that the deceased Meena Rani had died with her heart having stopped; and nothing was said to the effect that Kuldeep Chand, i.e. the petitioner, had killed her.

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Naturally, that would be duly taken into consideration on the next date of hearing.

A photocopy of this order be placed on the file of the other connected case.”

Today, learned State counsel submits that as per his instructions there is no other opinion of the medical board.

However, learned counsel for the complainant (for the petitioner in other two petitions, i.e. CRM-M-36813-2019 & CRM-M-9150-2020), submits that as a matter of fact the complainant has photographs of the dead body of the deceased lady which he has annexed with CRM-M of 9150 of 2020, which show ligature marks on her neck.

A perusal of those photographs, which have also

been sent to the Reader of this court by way of a "Whatsapp" communication and have been forwarded to me, would definitely show that in one of them there is a marked redness on the neck and the face, whereas on the other photograph there is no redness seen or very little redness seen, and there are some photographs of the dead body seen with a dupatta on one side of the neck and head whereas in the others there is no dupatta.

Learned counsel for the petitioner submits that therefore the contention that it was a murder or a dowry death as has been contended by learned counsel for the complainant, is wholly misplaced and with even the post mortem report suggesting no ligature marks etc., it cannot be accepted to be such, especially when there is also no poison detected in the viscera of the deceased.

Learned counsel for the complainant, however, further submits that the deceased gave birth to a child only 2-3 months earlier, and therefore, if there was any underlying lung disease, it could have come out in any medical report at that stage also; and consequently, the post mortem report actually is completely falsified, which is why the complainant has filed the accompanying two petitions seeking a proper investigation as also seeking to examine any lung and heart disease of the deceased victim, by re-examination of the preserved body-parts.

For learned counsel for the parties to refer to the documents which they specifically wish to, adjourned to 02.09.2020.

A photocopy of this order be placed on the file of the other connected case."

Today, both learned counsel for the petitioners and the complainant have virtually reiterated what they have already argued on the previous dates, with no further documents brought to the notice of this court, other than what they had already pointed to, with Mr. Khehar again stressing that even as per the post mortem report (Annexure P-3), it has been stated right in the beginning that no injuries seen on the body of the deceased.

He next again points to the chemical examiners' report (Annexure P-4) to submit that even the report on the examination of the viscera did not reveal any poisoning.

Mr. Khurana, learned DAG, Punjab, on query, again reiterates that as per his instructions, the said reports are the final report as regards the opinion of the doctors as also the chemical examiner.

Mr. Aulakh, learned counsel for the complainant, submits that as already noticed by this court in the petition filed by the complainant, there is a lack of proper investigation and therefore the matter needs to be properly investigated, especially with regard to any reference to ligature marks that were present on the neck of the deceased (as contended by him).

Having considered the above, in view of the fact that presently at least no document showing any ligature marks on the neck of the deceased or showing any injury on the body of the deceased, or any poisonous substance being present in the viscera of the deceased, has been brought to the notice of this court, and as regards the photographs on which the ligature marks are said to be existent, whether or not they were actually existent not being something which this court cannot comment on at this stage, the petitioner is ordered to be admitted to interim bail to the satisfaction of the learned trial court/Chief Judicial Magistrate/Duty Magistrate concerned, till the next date of hearing before this court, with this petition to be taken up for hearing on the date of hearing next after the date that is assigned for hearing in CRM-M-36813 of 2019, i.e. after the affidavit of the SSP, Kapurthala, has been filed and considered by this court in that case, with further directions to be issued thereafter depending upon the contents of that affidavit.

Consequently, this petition be adjourned for further hearing to 02.11.2020.”

Meanwhile, complainant Harbhajan Singh died. It was pointed

out that Ajay Kumar - son of the complainant had been examined as PW2 and was declared hostile. The State counsel was asked to file the affidavit of gazetted officer with regard to the material witnesses remaining to be examined after PW2.

In response thereto, an affidavit dated 28.03.2022 of Achhru Ram Sharma, PPS, Deputy Superintendent of Police, Sub Division Phagwara has been filed, wherein, it is stated that during course of the trial, the complainant Harbhajan Singh had died. Till date two prosecution witnesses namely Ajay Kumar son of complainant and Sunil Kumar son of Bihari Lal have been examined. They have resiled from their statements recorded during course of investigation. The status report further states that that except deceased Harbhajan Singh, Ajay Kumar and Sunil Kumar, no other private witness is left to be examined in the present case.

In view of the above, this petition is allowed. The order dated 02.09.2020 granting interim bail to the petitioner (Kuldeep Chand) is made absolute, subject to his furnishing fresh bail/surety bonds to the satisfaction of the Trial Court/Chief Judicial Magistrate concerned.

March 29, 2022

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No