

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

CRM-M-10434-2023

Date of decision : 09.03.2023

Vikas

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Nirmal Singh, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

This is the second petition for grant of regular bail to the petitioner in case FIR No.39 dated 21.08.2021, under Sections 304-B, 498-A, 34 of IPC (Section 34 of IPC removed and Section 406 IPC added later on), registered at Police Station GRP Kurukshetra.

Adumbrated facts of the case are that the complaint was lodged on the statement of Santosh Kumar Manjhi. It was alleged that he married his sister Mamta Kumari on 05.06.2015 with Vikas (petitioner) son of Jai Ram. The marriage took place in Bihar whereas the family of Vikas was residing in Village Mohara, District Ambala from last 25 years. In the marriage, they gave sufficient dowry as per their capacity but after the marriage, the husband of his sister and family members were not satisfied with the dowry given and hence, she used to be harassed and tortured repeatedly by them. His sister used to complain regarding the beatings given by Vikas for demand of dowry. After having been harassed, she used to come to parental home but they used to persuade her

to go back. It was alleged that Vikas was the greedy person and despite their best efforts, he did not mend his ways. On 16.08.2021, his sister told them telephonically that she was given severe beatings by Vikas. In the morning at about 10:00 AM, they were given the message that his sister had committed suicide by jumping before the train. On 18.08.2021, they visited the Civil Hospital, Kurukshetra and identified body of his sister Mamta and got her cremation done. Request was made to take legal action against the culprits. On the basis of complaint, formal FIR was lodged and investigation commenced. The investigating agencies made inquest report and obtained postmortem report. Thereafter, petitioner was arrested on 26.08.2021. The other family members were declared innocent. However, challan was presented only against the petitioner. He approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Kurukshetra praying for grant of regular bail. However, after hearing counsel for the parties, learned Additional Sessions Judge, Fast Track Special Court declined the same vide order dated 01.02.2023. Though the petitioner on earlier occasion approached this Court by way of filing CRM-M-24274-2022 but the same was allowed to be withdrawn vide order dated 04.07.2022 and hence, the petitioner has filed the present second petition praying for grant of regular bail.

Learned counsel for the petitioner has submitted before this Court that the petitioner has been falsely implicated in this case. He has submitted that the wife of the petitioner allegedly committed suicide after more than 06 years of the marriage. He submits that the couple was not blessed with any child and there was no allegation whatsoever regarding causing any harassment on account of demand of dowry from the

complainant's side in all these years. He has submitted that body of the deceased was cremated in the presence of her parental family. However, after 05 days of the occurrence, the present FIR was lodged with due deliberations only in order to falsely implicate the petitioner. It is submitted that the ingredients regarding commission of offence under Section 304-B of IPC are not fulfilled and hence, the presumption under Section 113-B of Evidence Act would not be attracted in this case. He submits that the majority of the prosecution witnesses already stand examined and thus, the petitioner is not in a position to tamper with the prosecution evidence. He submits that the petitioner has no criminal antecedents and thus, he deserves to be granted regular bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He has submitted that admittedly the unnatural death of the deceased had taken place within seven years of the marriage. There are specific allegations of causing harassment by the petitioner on account of demand of dowry and thus, provisions of Section 113-B of the Evidence Act would be attracted. However, he submits that out of 24 prosecution witnesses, 12 witnesses already stand examined including the complainant. He also submits that as per the instructions provided, the petitioner is not involved in any other case.

I have heard counsel for the parties and perused the record. Evidently, unnatural death of wife of the petitioner had taken place within 06 years of marriage. Out of 24 prosecution witnesses, 12 witnesses already stand examined. Petitioner is behind bars since 26.08.2021.

Whether presumption under Section 113-B of Evidence Act is attracted or

not would be decided by the trial Court on appreciation of complete evidence produced by both the sides before it. There is nothing on record to show that the petitioner has any criminal antecedents as he is not involved in any other case except the present case. As submitted before this Court, the complainant and other material witnesses already stand examined and thus, in the opinion of this Court, the petitioner will not be in a position to tamper with the prosecution evidence.

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. This Court would refrain itself from commenting anything on the merits of the case. The trial of the case will take sufficiently long time. Keeping in view the arguments raised by both the sides and perusing the record, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

09.03.2023
m. sharma

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