

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

108+224

2023:PHHC:104851

CRM-M-13122-2023 (O&M)

Date of decision: August 10th, 2023

Sadiq alias Sadique Mohammad

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ghulam Nabi Malik, Advocates
for the petitioner.

Mr. Inderpal Singh Sabharwal, Deputy Advocate General,
Punjab.

Mr. Rajat Singh Sidhu, Advocate
for the complainant.

MANJARI NEHRU KAUL, J.

CRM-33349-2023

Application is allowed subject to just exceptions and
Annexures P-7 and P-8 are taken on record.

CRM-M-13122-2023

Prayer in this petition is for grant of bail to the petitioner
in case FIR No.181 dated 06.09.2020 under Sections 306, 34 of the
IPC (Section 306 IPC deleted and offence under Section 302 added
later on) registered at Police Station Garhshankar, District
Hoshiarpur.

While drawing the attention of this Court to the
allegations levelled in the FIR, which has been annexed as
Annexure P-1, learned counsel for the petitioner has submitted that
the complainant had alleged therein that his son Mustaq Ali (since

deceased) was married with Zanav, however, the relations between his son and daughter-in-law were strained. Only four days prior to the occurrence in question, his daughter-in-law had returned to her matrimonial home from her parental house. At about 11:00 PM after dinner, while his deceased son and his wife went to their room to sleep, the other family members including the complainant slept outside. However, at 4:00 AM when the complainant woke up, he did not find his son in his room and then he started searching for him. The dead body of his son was found hanging from the roof with a bamboo while his feet were touching the ground. The complainant alleged that since his daughter-in-law i.e. wife of the deceased had illicit relations with one boy Sadik i.e. the petitioner, and his son had ended his life due to the aforesaid harassment meted out by the petitioner and his daughter-in-law.

Learned counsel submits that later on a new twist was given by the police and offence under Section 306 of the IPC was deleted and offence under Section 302 of the IPC added. Learned counsel has argued that firstly there were no allegations leveled in the FIR qua the deceased having been murdered by anyone much less the petitioner and secondly even the post mortem report which has been annexed as Annexure P-7 leaves no manner of doubt that if at all it was a case of suicidal hanging and not homicidal death. In support, learned counsel has drawn the attention of this Court to the post-mortem report, which has been annexed as Annexure P-7 by pointing to the following external injuries noticed on the dead body of the deceased:

Component	Remarks
Ligature mark present on neck 2 cm width 42 cm total length upward to left side and present over neck above the thyroid cartilage, underlying skin is crushed,	

depressed, underlying connective tissues contused, major vessels are crushed and contused, trachea is contused.

Mouth, Pharynx & Oesophagus

Tongue protruding from mouth and saliva drooping from both side of face

He has still further drawn the attention of this Court to the opinion of the doctor qua the cause of death of the deceased, wherein he noticed the following:-

"All injuries over neck, face and ear pinna Antemortem in nature. Injuries over feet, testis and penis are postmortem in nature."

Learned counsel has submitted that as far as the injuries over the feet of the deceased were concerned, they were opined to be post-mortem in nature and further it stood reflected in the post-mortem report itself that they were ant bite marks. Learned counsel has still further submitted that under the circumstances particularly keeping in view the post-mortem report, coupled with the fact that all the family members of the deceased were very much inside their house, when the occurrence in question took place, it could not have been a case of murder as it was impossible for the petitioner to have intruded inside the house of the deceased, murdered the deceased, more so when there were no other injuries on his person. It has also been asserted that there was no opinion of the doctor also that it was a case of homicidal strangulation. Learned counsel has submitted that the petitioner has now been in custody since 26.11.2022 and after the charges were framed on 24.04.2023, none of the 27 prosecution witnesses have been examined. Hence, there is no likelihood of the trial.

Per contra, learned State counsel, assisted by counsel for the complainant, has opposed the prayer and submissions made by the

counsel opposite. Learned State counsel has submitted that during investigation, it came to light that the deceased had been done to death and that was precisely the reason that offence under Section 306 of the IPC was deleted and instead Section 302 of the IPC was added. Learned State counsel has, however, not been able to dispute the findings recorded in the post-mortem report particularly the injuries on the feet of the deceased being post-mortem in nature and a result of ant bites. Learned State counsel has submitted that the case in hand hinges on circumstantial evidence and the petitioner had a motive to commit the crime in question as he had illicit relations with co-accused i.e. wife of the deceased.

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

The petitioner has been in custody since 26.11.2022 and as many as 27 prosecution witnesses have been cited, who are yet to be examined. As per learned State counsel, the next date fixed before the trial Court is 17.08.2023. The trial is unlikely to conclude in the near future.

In the facts and circumstances as enumerated hereinabove, this Court deems it fit to extend the concession of bail to the petitioner. The petition is, therefore, allowed. 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.

August 10th, 2023

(MANJARI NEHRU KAUL)

Puneet

JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No