

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**214****CRM-M-18421-2023****Date of Decision: 24.04.2023**

Karnail Singh

... Petitioner

VS.

State of U.T. Chandigarh

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S. Jammu, Advocate for the petitioner.

Mr. A.M. Punchi,P.P., UT, Chandigarh.

Sandeep Moudgil, J. (Oral)

Present second petition under Section 439 Cr.P.C. has been filed for grant of regular bail to the petitioner in case FIR No. 138 dated 15.12.2022, under Section 323,147,149,304 IPC of 1860 registered at P.S. Manimajra, U.T., Chandigarh.

Learned counsel for the petitioner has moved the instant petition on the same cause of action but on a changed circumstances drawing attention of this Court to the report of Department of Forensic Medicine and Toxicology, GMCH wherein it has been opined as under:-

“ Based on the reports referred to above and the findings of postmortem examination conducted by me, we are of the opinion that the cause of death in this case is acute coronary insufficiency in a case of preexisting chronic ischemic heart disease, which could have been exaggerated by the alleged altercation/assault. Chemical examiner's report shows 47.89% of ethyl alcohol in blood.”

A perusal of the aforesaid report clearly indicates that the petitioner was patient of chronic ischemic heart disease and also has consumed alcohol which was detected in the blood to the tune of 47.89% which has been shown to be the cause of death.

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It is on the strength of aforesaid changed circumstance, the instant petition has been preferred and the counsel for the petitioner has vehemently argued that offence under Section 304 IPC would not be made out qua the petitioner.

On the other hand, Mr. A.M. Punchi appearing on behalf of UT, Chandigarh contends that as per the report, though the cause of death was acute coronary insufficiency, but it is only during the course of alteration, the said fact of coronary insufficiency could have been exaggerated and he finally succumbed, therefore, the petitioner cannot be absolved in toto *qua* the offence under Section 304 IPC.

Be that as it may, it is for the trial Court to examine during the course of trial by leading evidence, but *prima facie*, relying upon the report of the FSL which is not disputed by the State counsel, the petition deserves to be allowed at least while considering the prayer of regular bail.

In view of the discussion made here in above, the petitioner is directed to be released on bail subject to furnishing bail bonds/personal security to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Chandigarh.

The petition stands allowed.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

24.04.2023
Harish Kumar

(SANDEEP MOUDGIL)
JUDGE

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No