

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

219

CRM-M-30082-2023 (O&M)

Date of decision: 22.08.2023

Rahul @ Kaalu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG, Haryana.

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.45 dated 24.02.2021, registered under Sections 302 and 34 IPC, at Police Station Sadar Palwal, District Palwal.

2. Learned counsel contends that the petitioner is in custody for about 9 months, having been arrested on 10.11.2022. Though the petitioner was named in the FIR along with his parents, however, he was arrested in this case after a year and a half of the incident, as he was not required by the investigating agency prior thereto. Admittedly the financial dealings were between the father of the petitioner, who is no more and the deceased, as per the statement of the complainant himself. The wide net was cast and the petitioner was falsely implicated in the case alongwith his mother, so as to involve the whole family. As per the allegations aluminium phosphide was mixed in the water and given deceitfully to the deceased by the petitioner and his parents. A reference is made to PMR, which reveals the presence of aluminium phosphide, as

also to the opinion of the doctor, Annexures P3 and P4, it being “the cause of death in this case was aluminium phosphide. Regarding consumption by self cannot be ruled out & by other person is not possible”. He relies on judgment of Delhi High Court in **Shri Nitish Yadav vs. The State**, 2011(4) ILR (Delhi) 461 to submit that aluminium phosphide is not soluble in water and having bad odor like dead fish cannot be deceitfully administered but forcibly given, which are not the allegations in the present case. In **Naresh Kumar vs. State of Punjab**, 2011(2) RCR (Criminal) 535, even conviction under Section 306 IPC was set aside by this Court by observing that “it is not believable that the accused would give Aluminium Phosphide/Salphide in water. It is a matter of common knowledge that when the tin box of Aluminium Phosphide is opened it emits foul smell. It is impossible to administer it to other person in a glass of water”. Further reliance is place on the orders in **Santosh Gupta vs. State**, 2018(248) DLT 28 and **Ajay vs. State of Haryana**, 2022(4) RCR (Criminal) 850 involving offences under Section 302, 304-B and 306 IPC respectively, bail was granted in a case also observing death by aluminium phosphide poisoning was most likely suicidal in nature. Challan was presented on 12.12.2022, under Section 306 IPC, however, subsequently the charges were framed on 04.05.2023, under Section 302 IPC and in the alternate under Section 306 IPC. Complainant, who is the son of the deceased, as also his brother have been examined but there are still 20 more witnesses to be examined. The petitioner is not involved in any other case.

3. The custody certificate dated 21.08.2023, filed by learned State counsel is taken on record, as per which, the petitioner is behind bars for 9 months and 12 days.

4. Learned State counsel opposes the bail on the ground that there are specific allegations against the petitioner, his mother and father (now deceased) of having mixed the poison in water deceitfully to the deceased. He is however unable to controvert the submissions made regarding the stage of the trial, complainant stands examined and the petitioner not being involved in any other case.

5. Heard.

6. Considering the facts and circumstances of the case, in particular that the petitioner is in custody for last 9 months and 12 days; not involved in any other case; charges have been framed on 04.05.2023 and 20 prosecution witnesses remain to be examined; material witnesses i.e. complainant and his brother stand examined; the trial is likely to take a considerable time, thus his further incarceration would not serve any useful purpose, the present petition for grant of regular bail deserves to be allowed.

7. As a result, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to his not being required in any other case. The petitioner shall abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/ intimidate the prosecution witnesses.

- (iii) The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
- (iv) The petitioner shall not commit an offence similar to the offence of which, he is an accused, or for commission of which he is suspected of.
- (v) The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
- (vi) The petitioner shall not in any manner misuse his liberty.
- (vii) The petitioner shall furnish his address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioner seeks to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.
- (viii) The petitioner shall not leave the country without prior permission of the trial Court.
- (ix) The trial Court/Duty Magistrate may impose any other condition, as deemed appropriate while releasing the petitioner.

8. It is made abundantly clear that in case there is any breach of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as granted to the petitioner by this order.

9. In view of the above, it is clarified that the observations made herein are limited for the purpose of present proceedings and would not be construed as an opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

22.08.2023
ashok

(AMAN CHAUDHARY)
JUDGE

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