

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

108+218

CRM-M-33007-2023 (O&M)

Date of decision: 12.09.2023

Aklesh Kumar @ Keru

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. P.K.S. Phoolka, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

Mr. Savreet Singh Brar, Advocate
for the complainant.

MANJARI NEHRU KAUL, J. (ORAL)

CRM-29875-2023

For the reasons mentioned in the application, the same is allowed and copy of order dated 09.06.2023 is taken on record as Annexure P-5 subject to all just exceptions.

CRM-M-33007-2023

1. The petitioner is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.56 dated 01.04.2023 under Section 308 of the IPC (Section 304 of the IPC added lateron) registered at Police Station Kotwali Bathinda, District bathinda.

2. Learned counsel for the petitioner *inter alia* contends that the occurrence in question wherein the deceased was allegedly hit with a wooden stick by the petitioner took place on 29.03.2023, however, the FIR annexed as Annexure P-1, was registered after an unexplained

delay of 03 days on 01.04.2023 by the father of the deceased, and that too against unknown persons. Learned counsel submits that on the face of it, it is a case of false implication because firstly as per the post mortem report of the deceased, he had died of cardiac arrest, and still further it had been stated by the complainant while lodging of the FIR that while he was taking his injured son i.e. the deceased to the hospital, he as well as his brother in law Jagsir Singh had been informed by his son that he had been assaulted by some unknown persons. However, strangely in the later part of the FIR the complainant had claimed that he had found out from his own sources that there had been a scuffle between the petitioner and his son due to some previous monetary dispute between them and during the scuffle the petitioner had inflicted blows with a wooden stick on the deceased. Learned counsel has, therefore, argued that in case there had been indeed some monetary dispute between the deceased and the petitioner, there was nothing which would have prevented the deceased from disclosing the same to his father as he was conscious throughout and died after 04 days of the alleged occurrence and it could not be believed that the deceased would not have known the name of the petitioner. Learned counsel has further drawn the attention of this Court to Annexure P-3 which is the post mortem report of the deceased and has submitted that it clearly finds reflected therein that after being admitted in the hospital, the attending doctors had twice advised surgery upon the deceased, however, it was the complainant party which had gone against the medical advice and refused to get any surgery performed upon the deceased. Hence, it could be safely inferred that the cause of death of the deceased was not

on account of the head injury sustained by him but on account of the complainant party itself, failing to give their consent for the surgery of the deceased. Learned counsel has still further contended that it was also a matter of record that after the deceased had been removed to the hospital in an injured condition by the complainant and his brother in law Jagsir Singh, they had categorically stated that they did not want to take legal action against any person much less get their statements recorded. Learned counsel has, thus, asserted that all the above circumstances clearly point to a highly improbable and false version having been brought forth against the petitioner for which he deserves to be enlarged on bail *moreso*, when he has clean antecedents and is not involved in any other criminal case.

3. Per contra, learned counsel while opposing the prayer made by the counsel opposite has not been able to controvert that after the occurrence in question, the complainant party had kept quiet for three days and it was only thereafter, on 01.04.2023, the FIR in question came to be lodged wherein it was alleged that some unknown persons had inflicted injury on the head of the deceased. However, it has been submitted that in the FIR itself the complainant had submitted that later on they had tried to gather information and learnt that the injuries had been inflicted by none other than the petitioner, on account of some previous monetary dispute between him and the deceased. Learned State counsel has submitted that charges stand framed and prosecution evidence is due to commence on the next date of hearing.

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

5. The petitioner has been in custody since 01.04.2023. Investigation in the case in hand is complete and the charges have been framed against the petitioner for commission of an offence under Section 304 of the IPC. As many as 20 prosecution witnesses have been cited and, hence, there is no likelihood of the trial concluding 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.

6. Accordingly, the instant petition is 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.

12.09.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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