

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

223

CRM-M-35000-2023 (O&M)

Date of Decision : 06.12.2023

SHAMSHER

.... Petitioner

VERSUS

STATE OF HARYANA

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rakesh Nehra, Senior Advocate with
Mr. Reetesh Kumar, Advocate and
Mr. Vikalp Hooda, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG Haryana.

Mr Rajeev Anand, Advocate for CBI.

Mr. Benant Singh Noor Marok, Advocate for the complainant.

ALKA SARIN, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.460 dated 02.07.2022 under Sections 376(2)(n), 328, 342, 506 of the Indian Penal Code, 1860 and Sections 25 and 27 of the Arms Act, 1959 registered at Police Station City Rohtak, District Rohtak.

2. The present case has a checkered history and hence it would be necessary to advert to a few facts before dealing with the issue in hand. The present petitioner herein, namely, Shamsher, was kidnapped on 07.06.2022 along with Seema, Bimla (mother in law of Seema) and two sons of Seema.

The son of the petitioner gave a complaint to the Police Station. Pursuant to

the said complaint, the Police went to the house of Mintu at Chopra Colony, Gohana and got recovered Shamsher from the house of Mintu vide recovery memo dated 07.06.2022 which has been appended with the petition as Annexure P-3. After completion of all the formalities the petitioner was released at Rohtak. On the same date i.e. 07.06.2022, Seema (one of the persons who were abducted) was taken to the hospital at around 9:00 p.m. where she was declared brought dead and her postmortem was conducted. Thereafter, her mother, namely, Saroj Bala, made a statement that she did not suspect any foul play and that the body be handed over to them for cremation. The body was accordingly handed over to Saroj Bala and rest of the family members and Seema was cremated on 08.06.2022. From 08.06.2022 till 22.06.2022 no action was taken qua the death of Seema. The accused in FIR No.393 dated 07.06.2022 under Sections 365, 323, 452, 148 and 149 of IPC registered at Police Station City Rohtak applied for bail. During the hearing of the bail petition of one of the accused, namely, Sanjay, the learned Additional Sessions Judge, Rohtak enquired about the whereabouts of the other people who were abducted along with Shamsher wherein it came to fore that Seema had died on 07.06.2022 and was later cremated on 08.06.2022 on the basis of the statement made by the mother of Seema, namely, Saroj Bala, that Seema was happy in her matrimonial house and she was in depression and that they did not doubt her in-laws. Thereafter, Sections 302 and 328 of IPC were added against accused Mintu and others. Subsequently, on 24.06.2022 statement of Saroj Bala (mother of Seema) was recorded and on 16.07.2022 statements of Bimla and son of

Seema were recorded and Sections 302 and 328 were deleted against accused Mintu and his family members and Section 306 was added against the present petitioner and he was also made an accused in the present case. Simultaneously on the statement of the mother-in-law of Seema, namely, Bimla, FIR No.460 dated 02.07.2022 under Sections 328, 376(2)(n), 342, 201, 506 of IPC and Sections 25 and 27 of the Arms Act, Police Station City Rohtak was registered wherein allegations were made against the petitioner herein of having committed rape upon Seema and Bimla as also allegation that Shamsher (the petitioner herein) gave a *pudia* to them in a Swift Desire Car. It is apt to note that trial pertaining to both the FIRs was being carried out together. Though the offences under Sections 302 and 328 stood deleted by the Police, however, the Court of Special Judge-cum-Additional Sessions Judge, Rohtak vide order dated 25.04.2023 has held as under :

"Therefore, in view of the above discussion, after going through the whole record of both the files particularly perusing FSL report, post mortem report of deceased 'S', MLR of accused Shamsher and the place of death of deceased 'S' in her matrimonial house at Gohana and timings of her death, prima facie offence under Section 302 IPC i.e. murder of 'S' is made out against Mintu, Raj Kumar, Hariom, Anup, Sombir, Aman and Sanjay."

Numerous petitions were filed by the accused challenging the order framing charges as well as petitions were filed for bail which came up

before a Coordinate Bench of this Court and were taken up together being CRM-M-40512-2022; CRM-M-16737-2023; CRM-M-26501-2023; CRM-M-35465-2023; CRR-1164-2023; CRR-1239-2023; CRR-1252-2023 and CRR-1995-2022. On 13.09.2023 a Coordinate Bench of this Court, after noticing the facts, ordered that the investigation be handed over to Central Bureau of Investigation (CBI) and the petitioner herein was also directed to be released on interim bail in FIR No.393 dated 07.06.2022 under Sections 365, 323, 452, 148 and 149 of IPC registered at Police Station City Rohtak. The present petition falling under the category of Crime Against Women was listed before this Court.

3. Learned senior counsel for the petitioner would contend that till such time as charges under Section 302 of IPC were not added in FIR No.393 dated 07.06.2022, there was no allegation of rape against the petitioner. The mother of one of the accused Mintu (who is the husband of Seema) got the present FIR registered on the allegation that the present petitioner had been committing rape upon her and Seema. Learned Senior counsel would further contend that the timing of the FIR is very suspect. It is further the contention that Seema died on 07.06.2022 and till 22.06.2022 no action was taken and no complaint was made. It is only when on the intervention of the Court concerned Sections 302 and 328 of IPC were added, the present FIR was registered on 02.07.2022. Learned senior counsel would further contend that the petitioner has been in custody for a period of one year four months and seventeen days.

4. Learned counsel for the CBI has handed a copy of the status

report which is filed in the connected cases wherein the facts have been narrated. It is further been stated that the matter is still under investigation. Learned counsel for the CBI is, however, not in a position to deny the fact that the petitioner as well as all the co-accused in FIR No.393 dated 07.06.2022 under Sections 365, 323, 452, 148 and 149 of IPC registered at Police Station City Rohtak have been granted the concession of bail. Learned counsel for the CBI has filed the custody certificate and as per the custody certificate the petitioner has been in custody for a period of one year four months and seventeen days.

5. Heard.

6. In the present case apart from the statement of Bimla, who is mother of accused Mintu in FIR No.393 dated 07.06.2022 and qua whom charges have been framed by the Court concerned under Section 302 of IPC for the murder of his wife Seema as well as under Section 148, 149, 323, 452, 465 and 328 of IPC, there is no other incriminating evidence against the petitioner. In fact *prima-facie* the timing of the FIR is very suspect. No such allegations were made during the lifetime of Seema and at the time of her death a statement was made by her mother, namely, Saroj Bala, that they did not suspect any foul play and hence she was cremated on 08.06.2022. Thereafter, there was total silence from 08.06.2022 to 22.06.2022 till the time when the Court concerned made enquiries regarding the whereabouts of Seema and Bimla who had also been abducted along with the petitioner herein. It is only on the addition of Sections 302 and 328 of IPC in FIR No.393 dated 07.06.2022 that the present FIR was got registered.

The petitioner has been in custody for a period of one year four months and seventeen days. The trial is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind the bars any further. Apart from FIR No.393 dated 07.06.2022, there is no other case pending against the petitioner.

7. In view of the above and without commenting upon the merits of the case, this Court deems it to be a fit case to grant the concession of regular bail to the petitioner. The petitioner is directed to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the CBI Court concerned.

8. However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

9. It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

10. Disposed off. Pending applications, if any, also stand disposed off.

06.12.2023

Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO