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

CRM-M-37597-2022

Date of Decision: 04.01.2023

Sunny Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. J.S. Lalli, Advocate,
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

This is the fifth petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.176, dated 30.06.2019, under Section 308 & 304 IPC, registered at Police Station Sadar Amritsar, District Amritsar.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 02.07.2019, which is almost 3½ years. He further submitted that earlier the FIR was registered under Section 308 IPC and the trial has been commenced whereby 4 prosecution witnesses have been examined, thereafter, since the injured, namely, Rajesh Kumar had died on 25.12.2021, the police has presented a supplementary challan under Section 173(8) Cr.P.C. against the petitioner under Section 304 IPC. He also submitted that the allegations against the petitioner were that he was a

worker in a factory and the deceased was also working in the same factory wherein allegedly the petitioner had inserted the air pipe in the anus of the deceased, namely, Rajesh Kumar and filled air in his stomach and because of which he had sustained internal injuries. He further submitted that although now the viscera report has been received which shows some injuries but keeping in view the long custody of the petitioner and also the fact that the petitioner is not involved in any other case and has got clean antecedents, he may be considered for the grant of regular bail. He also submitted that although the present is the fifth successive bail petition and the last bail petition was dismissed on 20.04.2022 vide Annexure P-7 but now considering the long custody of the petitioner which is almost 3½ years, he may be considered for the grant of regular bail.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted that it is correct that the petitioner is in custody since 02.07.2019 and he is not involved in any other case as per her instructions. She has, however, referred to the affidavit filed by the Assistant Commissioner of Police, North, Amritsar City and has submitted that now the viscera report has been received in which the cause of death has been shown to be Septicemia as a complications of Rectal repair and Double Loop Colostomy carried out as a management subsequent to Pneumatic Rectal and Sigmiod Colon injuries which are sufficient to cause death in ordinary course of nature. She also referred to Para No.14 of the status report to contend that there is an apprehension that in case the petitioner is released on regular bail then he may influence or threaten the prosecution witnesses.

I have heard the learned counsel for the parties.

The petitioner is stated to be in custody for almost 3½ years and 4 prosecution witnesses have already been examined as per the learned counsel for the parties. The viscera report has already been received which shows Septicemia as a complications of Rectal repair and Double Loop Colostomy carried out as a management subsequent to Pneumatic Rectal and Sigmoid Colon injuries which are sufficient to cause death in ordinary course of nature. During the course of arguments, a query being raised to the learned State counsel as to whether there is any material to support the averment made in Para No.14 of the affidavit wherein apprehension has been expressed that in case the petitioner is released on regular bail then he may influence or threaten the prosecution witnesses, she was not able to answer to the same. Therefore, in the absence of any material, the averment made in Para No.14 of the affidavit, which is only a bald averment, cannot become a ground for denial of bail. The petitioner is stated to be having clean antecedents and is not involved in any other case. Although, it is a fifth successive bail petition filed by the petitioner but in the light of the aforesaid facts and circumstances, especially the long custody of the petitioner, which is almost 3½ years, the successive bail petition would certainly be maintainable.

Therefore, keeping in view the aforesaid totality of the circumstances of the present case and also considering the long custody of the petitioner, which is to the extent of 3½ years, this Court deems it fit and proper to grant regular bail to the petitioner. Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on

furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

04.01.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |