

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(205)

2023:PHHC:059457
CRM-M-38753-2022
Date of Decision: 26.04.2023

Sukesh Kumar Dhankar

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Akash Dalal, Advocate for the petitioner.

Mr. B.S. Virk, D.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

This is the second petition filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.144 dated 21.2.2017 under sections 346, 302, 201, 216, 120-B and 34 IPC, registered at Police Station, Sadar Jhajjar, District Jhajjar.

As per factual matrix, a complaint was lodged on the statement made by petitioner Sukesh Kumar, wherein it was alleged that on 21.2.2017 at about 11'O Clock his wife namely Pooja went for taking medicines from Govt. Hospital, Dhakla and did not return. Despite his best efforts he failed to trace her out. It was suspected that his wife had been kidnapped by someone. A prayer was made to take legal action.

On the basis of complaint FIR was registered under section 346 IPC and the investigation commenced. During investigation the investigating agency recorded the statement of Yogesh i.e. brother of the deceased Pooja, who deposed that the complainant Sukesh Kumar who was the husband of his sister had illicit relations with one Aarti and Sukesh Kumar was involved in eliminating his sister. On the basis of the same the

investigating agency recovered dead body of Pooja from the house of Aarti with whom petitioner Sukesh Kumar had alleged illicit relations. On account of the same petitioner was nominated as accused in this case along with co-accused Aarti. Besides these two accused, two more persons namely Rajesh and Sudesh Devi were also arrayed as accused for disposing the dead body of the deceased. They were tried by the Trial Court, however, both Rajesh and Sudesh Devi were acquitted vide order dated 12.10.2018. The petitioner was declared Proclaimed Offender, however, subsequently he was arrested on 3.3.2019 along with co-accused Aarti. He approached the court of learned Sessions Judge, Jhajjar twice for grant of bail, however, the same were declined. Thereafter, third bail application filed by the petitioner was declined by the learned Sessions Judge, Jhajjar vide order dated 14.6.2022. Aggrieved by the same petitioner approached this court for grant of bail by way of filing CRM-M-21988-2021, however, the same was dismissed as withdrawn vide order dated 25.11.2021. Hence, this second petition.

Learned counsel for the petitioner vehemently contends that petitioner has been falsely implicated in the present case. It is submitted that case of the prosecution is a blind murder case. He submits that petitioner has been implicated in this case only on the basis of circumstantial evidence and there is no direct evidence against the petitioner. Counsel submits that it was petitioner who lodged the FIR regarding his missing wife, however, thereafter he was falsely implicated in this case. He submits that petitioner has served in Army and he cannot be expected to commit such a heinous offence. Counsel submits that petitioner is behind bars since the date of his arrest i.e. from 3.3.2019 and thus has

completed more than 4 years behind the bars. It is submitted that till date prosecution has not been able to conclude the trial. It is submitted that petitioner has every right for a speedy trial which is intentionally being defeated by the prosecution. To buttress his arguments, counsel submits that deceased Pooja and her sister were both married in the same family and her sister Suman is happily married. She was also examined as a prosecution witness by the Trial Court and in her deposition she deposed that petitioner and deceased had cordial relations. He submits that Yogesh i.e. brother of the deceased on whose statement petitioner was implicated in this case has also been examined as PW-7 by the Trial Court and he has not supported the case of prosecution and has been declared hostile. It is submitted that petitioner has no criminal antecedents and thus he deserves to be granted bail.

On the other hand, learned State counsel has vehemently opposed the submissions made by counsel for petitioner. He submits that petitioner is the husband of the deceased. It is submitted that petitioner had illicit relations with co-accused Aarti and it is on her disclosure that dead body of the deceased was recovered and hence it cannot be argued that petitioner has been falsely implicated in this case. However, he submits that two co-accused namely Rajesh and Sudesh have been acquitted by the Trial Court and both of them were charged for the offence under section 201 IPC. It is submitted that out of total 25 prosecution witnesses 17 already stand examined including all the material witnesses. It is further submitted that Yogesh and Suman i.e. brother and sister of the deceased have not supported the case of prosecution. It is further submitted that petitioner has no criminal antecedents.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Admittedly, petitioner is behind bars for the last about 4 years. The case of the prosecution is based on the circumstantial evidence. The first version was recorded on the statement of the petitioner. The deceased and her sister Suman both were married in the same family and Suman is happily married in the same family. She has deposed before the Trial Court that the relationship between the petitioner and deceased was cordial. All the material witnesses already stand examined. As per information provided to learned State counsel petitioner has no criminal antecedents. There is no gainsaying that every accused has right of speedy trial. Keeping in view the overall facts and circumstances of the case and the custody period of the petitioner, this court is of the opinion that petitioner deserves to be granted the benefit of bail.

This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

26.04.2023

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No