

CRM-M-38537-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-38537-2022****Date of decision: 21.04.2023**

Kulwant Singh

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kuldip Singh, Advocate, for both the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. G.B.S. Gill, Advocate, for the complainant.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.45 dated 10.05.2022 under Sections 304, 34 IPC (Section 27 of the NDPS Act added later on) registered at Police Station Bahav Wala, District Fazilka.

2. The present FIR came to be registered at the instance of Amarjit Singh son of late Harnam Singh, who stated that he was running a Karyana shop in the village. He had two brothers and three sisters, all of whom were married. His brother Sukhdev Singh was an agriculturist and fell in the company of drug addicts. He received a telephonic information from one Surjit Singh who told him that his brother Sukhdev Singh was admitted at Civil Hospital, Sitto Gunno. On reaching the Hospital, he was told by the Doctor that his brother-Sukhdev Singh (since deceased) was brought dead to the Hospital. On an enquiry, he believed that his brother-Sukhdev Singh had been brought to village Himmatpura by Manoj Kumar son of Atma Ram

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dated 06.12.2022 passed in CRM-M-38993-2022 and CRM-M-39157-2022) and both of them had given him an excessive dose of intoxicating substances due to which his brother-Sukhdev Singh had died.

Pursuant to the registration of the FIR, during investigation, the name of Kulwant Singh (petitioner) son of Surjan Singh came up and he was nominated as an accused vide DDR No.43 dated 10.05.2022 and an offence under Section 27 of the NDPS Act was added in the FIR vide DDR No.38 dated 11.05.2022.

The post-mortem of the deceased-Sukhdev Singh was conducted on 11.05.2022. On receipt of the report of the Chemical Examiner, it was reported that no poison was detected and therefore, the cause of death as given by the Board of Doctors was as under:-

“In the opinion of Board of Doctors the cause of death in this case is asphyxia due to choking which is sufficient to cause death in ordinary course of nature”.

The dope test of the accused Manoj Kumar, Rakesh Kumar and Kulwant Singh was got conducted from Civil Hospital, Abohar. While the test report of Rakesh Kumar was negative, the test reports of the accused-Manoj Kumar and Kulwant Singh were positive.

3. The learned counsel for the petitioner contends that the co-accused, namely, Manoj Kumar and Rakesh Kumar, both of whom have been granted the concession of bail, have been named in the FIR. The petitioner has not been named therein but has been arrayed as an accused on the basis of the confessional statement of the two main accused. Pursuant to the arrest of the petitioner, no recovery was effected from him. As per the

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cause of death was “*asphyxia due to choking*”. Therefore, the culpability of the accused including the petitioner could not be established. As the petitioner was in custody since 10.05.2022 and none of the 31 prosecution witnesses had been examined so far, the further incarceration of the petitioner was not required, moreso, when his co-accused, namely, Manoj Kumar and Rakesh Kumar had been granted the concession of bail vide common order dated 06.12.2022.

4. The learned counsel for the State, on the other hand, contends that the statement of Vijay Laxmi, wife of the deceased-Sukhdev Singh, was recorded, as per which all the three accused including the present petitioner knew the deceased. In fact, on the date of the occurrence, the deceased-Sukhdev Singh had gone away with the co-accused. Subsequently, he was found dead. He contends that the evidence against the accused established that they had, in fact, provided intoxicating substances to the deceased on account of which he died of an overdose. In addition, he contends that the petitioner is an under Trial in two cases, one under the NDPS Act and another under the Excise Act whereas he is a convict in two cases under the NDPS Act wherein he was sentenced to undergo rigorous imprisonment for a period of one month in one case and probation in the other. Therefore, his criminal antecedents do not entitle him to the grant of bail. He however, does not dispute the period of custody undergone by the petitioner as also the stage of the Trial.

5. I have heard the learned counsel for the parties.

6. A perusal of the FIR would reveal that the petitioner has not been named therein. His co-accused, namely, Manoj Kumar and Rakesh

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the concession of bail vide order dated 06.12.2022. Pursuant to the arrest of the petitioner, no recovery of intoxicant substance was effected from him. The deceased is said to have died on account of an “*asphyxiation due to choking*”. It would be a matter of adjudication during the course of Trial as to whether the said *asphyxiation* was caused on account of any ingestion of an intoxicating substance. At this stage, the petitioner has been in custody since 10.05.2022 and none of the 31 prosecution witnesses have been examined so far. Therefore, the Trial of the case is not likely to be concluded anytime soon. In the four cases registered against the petitioner, he has either been granted bail or has been sentenced to undergo imprisonment for a period of one month in one case and probation in the other. In view of these facts, the further incarceration of the petitioner is not required.

8. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Kulwant Singh is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any case other than the cases referred to hereinabove.

(JASJIT SINGH BEDI)
JUDGE

April 21, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No