

CRM-M-42257-2023 (O&M)

226

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42257-2023 (O&M)

Date of decision: August 31, 2023

Abhishek Sharma

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms. Divya Sharma, Advocate for petitioner.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.296 dated 13.06.2022, registered under Sections 302, 309 of the Indian Penal Code, at Police Station, Zirakpur, District SAS Nagar.

2. FIR in question is based on the complainant's version of the incident. It is case of an alleged filicide committed by the petitioner. Complainant-Nikita is wife of the petitioner. Per her account, on June 11, 2022, the complainant, along with her husband, Abhishek Sharma (the petitioner), visited her in-laws' family. During this visit, some arguments ensued with her in-laws' family, resulting in them expelling her from the house. Following this, Nikita and Abhishek returned home on the intervening night of June 11th and 12th, arriving at their residence around 6 a.m. Later, same day at around 11 a.m., the petitioner entered into an altercation with Nikita. Subsequently, he expelled her from the room, locking it from the inside while keeping their 6-month-old son with him. Despite her repeated pleas, the petitioner neither unlocked the door nor handed over their infant to her. Nikita then went away to her sister's house nearby. She also explained the entire situation to her father over the phone. Afterward, she attempted to contact her husband, but his phone was switched off. In the evening, around 8-9 p.m., she returned to her society with her brother-in-law Hitesh, but their house was found locked. Nikita searched for her husband in the society's park and other places but was unable to locate him. The following day, on June 13, 2022, Nikita, accompanied by her parents went to their house. There, they discovered her son lying unconscious, with no signs of movement. His right hand, right ear, right leg, and

CRM-M-42257-2023 (O&M)

lips had turned bluish. When Nikita inquired about this, the petitioner informed her that the previous day, he had suffocated the child by covering his mouth, causing his death. Basis of the version aforesaid, an FIR was registered in this regard. Petitioner was arrested and is in custody since 13.06.2022.

3. Learned counsel for petitioner submits that entire case against the petitioner is based on circumstantial evidence. Except the statement of complainant, i.e., Nikita (PW1), estranged wife of the petitioner, there is no other evidence against the petitioner. The entire case is based on bald and self-serving statement of complainant, who has a matrimonial discord with the petitioner. After unfortunate death of child, complainant has also filed a petition seeking divorce from the petitioner.

4. She contends that no motive has been attributed to the petitioner for alleged commission of the offence. Complainant has also admitted in her cross-examination that petitioner was a good father and she did not feel that child was in any danger with the petitioner.

5. She further contends that per FSL report, death of the child was because of asphyxia due to smothering. However, complainant has made a contradictory statement alleging that child was strangled. There were no strangulation marks on the neck of deceased child.

6. She argues that the child was crying inconsolably while the petitioner's wife, was fighting with him and did not attend to him and left the home. She states that it is a tragic case where due to parental neglect of the mother the infant choked with his own saliva and died for lack of oxygen as his respiration got blocked while crying. She argues that there are many such reported cases of infants dying such unfortunate deaths.

7. Against the petitioner, the only evidence is the alleged extrajudicial confession of the petitioner, which he allegedly made to her estranged wife, complainant, which cannot be relied upon, is her argument.

8. Learned counsel further urges that material witnesses have already been examined in the trial Court and no useful purpose would be served by keeping petitioner behind bars. Nothing is to be recovered from him.

9. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. He submits that complainant and other

CRM-M-42257-2023 (O&M)

material witnesses have specifically made statements against the petitioner. If enlarged on bail in present case, there is every likelihood that petitioner may tamper with the evidence and/ or influence the witnesses. Petitioner is not involved in any other criminal case.

10. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

11. Challan was presented and charges were framed on 04.01.2023. Investigation is thus complete and petitioner is thus not required for any further custodial interrogation. Facts/allegations in the case, which led to the death of an infant, are rather eerie, chilling to the bone and shuddering to the conscience of anyone, be it the version of the father or the mother.

12. Allegations/cross allegations are a matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. On a Court query, learned State counsel, under instructions from ASI Nirmal Singh informs that out of total 21 witnesses, 07 have been examined so far. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the past more than 01 year and 2 months, being behind bars since 13.06.2022.

13. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/or influence witnesses. It is stated that petitioner has got fixed abode and got his parental family with whom he is emotionally attached. It is unlikely that he poses any flight risk and/or will flee from trial proceedings.

14. Learned counsel for the petitioner submits that petitioner is under deep trauma and in a state of depression for having lost his son on one hand and, then being falsely embroiled into his alleged killing on the other hand, at the instance of his estranged wife owing to the matrimonial differences. If not enlarged on bail to defend himself, he would suffer a serious prejudice to present his defense. She states that petitioner is an IT professional and due to his continued incarceration has already lost his job and, his career prospects would suffer further be seriously jeopardized. In case he is not let out, he will be rendered jobless and without any livelihood for his entire life, owing to the stigma of being in jail for so long. Living in lifetime penury would become his *fate accompli*, in such circumstances, she would contend.

16. Accordingly, petitioner is ordered to be released on bail, in case not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

18. Pending application(s), if any, shall also stand disposed of.

August 31, 2023

Whether speaking/reasoned:

Whether reportable:

Yes/No