

233 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53427-2023
Date of decision : 30.11.2023

JOGENDER

....Petitioner

Versus

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rajat Mor, Advocate for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.110 dated 17.05.2022 registered for the offences punishable under Sections 302, 34 IPC at Police Station Jhojhu Kalan, District Charkhi Dadri, Haryana.

2. Status report by way of affidavit of Des Raj, HPS, DSP, Badhra Distt. Charkhi Dadri has been filed on behalf of respondent-State today in Court, which is taken on record. Copy supplied.

3. The author of the FIR is Amit son of Sanjay who claimed as under :

“xxx it is requested that I Amit S/o Sh. Sanjay is resident of Village Makrana and used to agriculture work. My father were three brothers. Elder two him was Charan Singh who has expired 15 years back. After him my Uncle (Tau) Bijender @ Kalia aged about 48 years and younger to all is my father Sanjay Kumar. On

16.05.2022 at about 10:00 pm, I and my Uncle (Tau) Bijender were working in our fields which is situated on the way of Dadri. From where I returned on the motorcycle to my house in the village. When the tractor of my uncle Bijender not arrived for considerable long period, I returned to search him in the fields through Kacha Path. When I reached near liquor-vend of the village, I saw our tractor standing in front of liquor-vend on the main road. When I came more close, I saw accused Jogender So Ved Parkash, Manjit @ Motla S/o Sher Singh, Sanjeev S/o Sher Singh, Sudhir S/o Naresh running from the spot and my uncle Vijender was lying in an injured condition on the road on back of tractor and blood was oozing. I turned perplexed and rushed back to the house to inform family members and with them I again arrived at the spot. When we checked, my uncle Vijender had already died. The above cited accused persons have committed murder of my Tau. Motive behind the crime is the murder in the year 1998 and since then enmity is there with Jogender etc. Strict legal action be taken against the accused persons. xxx”

4. After investigation two of the accused namely Manjit @ Motla and Sanjeev were found to be innocent and the petitioner along with one Sudhir were challaned. In the application moved by prosecution under Section 319 Cr.P.C. the said Manjit @ Motla and Sanjeev who were initially granted clean chit by the investigating agency, stand summoned as additional accused and have been admitted to pre arrest bail.

5. Counsel for the petitioner submits that apart from the fact that once co-accused have been admitted to pre-arrest bail, the petitioner shall also be entitled to regular bail another fact has come on record i.e. at the time of post-mortem of the deceased the doctors deferred to opine regarding cause of death till receiving the Forensic Chemical Examination Report and

now after receiving the FSL report the opinion as per the status report filed today by way of affidavit of Des Raj, HPS, DSP, Badhra Distt. Charkhi Dadri, before this Court is as under :

“injuries mentioned in PMR are sufficient to cause death in normal course of life. However, the said victim had consumed the ethyl alcohol in the strength of 86.25 mg%. The possibility of contribution toward the death by the said strength of the alcohol cannot be ruled out.”

6. He thus submits that the same injuries were earlier found to be insufficient to constitute opinion whereas now the same doctors have opined otherwise. He, however, submits that even the opinion that has now been presented before this Court is considered the same demolishes the case of the prosecution *in toto* as now doubt has arisen about the cause of death of the deceased which shall entail benefit to the present petitioner. He further submits that owing to the application filed by the prosecution under Section 319 Cr.P.C. *de novo* trial has started and the custody of the petitioner is being prolonged as a punitive measure.

7. Per contra, State Counsel submits that there is an old enmity between the families which is primary motive. Even the occurrence was captured in CCTV footage wherein two persons can be seen dragging the deceased from the tractor.

8. Having heard rival contentions of counsel representing the parties and after carefully going through records of the case this Court finds

that the challan in the present case was filed on 23rd of August, 2022, charges were framed on 3rd of October, 2022 and despite passing of more than 1 year by now only one witness i.e. the complainant has been examined that too in part.

9. In view of above, without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and the fact that the co-accused who have assigned the similar role also stand admitted to pre-arrest bail, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

November 30, 2023

(Pankaj Jain)

Dpr

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No