

**205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-60336-2022

Date of Decision: 06.01.2023

Ram Pal

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Manjinder Singh Saini, Advocate, for the petitioner.

Mr. Karunesh Kaushal, Assistant Advocate General, Punjab.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.36 dated 08.04.2021, registered under Sections 302, 201, 34 IPC, at Police Station Mahilpur, District Hoshiarpur.

Adumbrated facts of the case are that the complaint was lodged by the complainant, namely, Shekhdeen @ Jahjib Mohammad on the basis of the allegations that he was residing with his mother Seema Rani and Sister Muskan. His parents had taken divorce many years ago. His mother was working at Nice Day, Phagwara and thereafter, she started doing work of cooking in the house of different people. A person namely Rahul used to visit her mother from the last 3-4 years and his mother informed him that she had performed marriage with Rahul. On 29.03.2021 at 6 pm, his mother went with Rahul by saying that she was going to market and thereafter, she did not return. He tried to contact his mother on her mobile phone, but the same was found switched off. They searched her with the help of their relatives as well, but failed to trace her out. On 02.04.2021, the complainant gave complaint regarding missing of his mother in the Police Station. He found that Rahul is also not present in his house and thus, suspected foul play on the part of Rahul. During their search, they came to know that a

nude and decomposed body of lady was found from the shrubs in the backside of Gurudwara Sahib Shaheedan. They went there and identified the body to be of his mother. It was suspected that Rahul, who used to visit her mother has committed murder of his mother. Request was made to take legal action against the culprit. On the basis of the complaint filed, the FIR was lodged and investigation commenced. During the investigation, supplementary statement of the complainant was recorded on 11.04.2021, wherein, he stated that his mother went on 29.03.2021 at 6:00 pm with Rahul and after some time she returned back. However, thereafter at about 10:00 pm, he saw Ramu (petitioner), who took her on his motorcycle and thereafter his mother did not come back. Request was made to carry out enquiry in the same. During the enquiry, the Investigating Agency took the vaginal swabs and sent them for DNA sampling. The petitioner was arrested on 11.04.2021. He approached the Court of learned Addl. Sessions Judge, Hoshiarpur for grant of bail, who, after hearing the parties, declined the same vide order dated 05.12.2022. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

It has been vehemently contended by learned counsel for the petitioner that the petitioner has been falsely roped in the present case. He has submitted that the complainant initially lodged a missing report on 02.04.2021, wherein, he simply stated about missing of his mother since 29.03.2021. He submits that missing report did not mention any name, however, thereafter, on 07.04.2021, he lodged the complaint, on the basis of which the present FIR was lodged. He submits that the complainant specifically named Rahul, with whom, his mother alleged to have performed

marriage after having been taken divorce from his father. He has submitted that even in the FIR, there was no whisper regarding the complicity of the petitioner. He further submits that in a clandestine manner thereafter supplementary statement of the complainant was recorded on 11.04.2021 and it is for the first time that the complainant in a mischievous manner exonerated Rahul and implicated the petitioner. He submits that the complicity of the petitioner has been made in a deliberated manner. He further submits that DNA samples were also taken and even from that the complicity of the petitioner is not corroborated. To strengthen his arguments, he has submitted that during the trial the prosecution has examined complainant as PW-1, uncle of complainant as PW-2, Muskan, sister of complainant as PW-3 and Massi of the complainant as PW-4. He has submitted that all these material witnesses have not supported the case of the prosecution and thus, were declared hostile. He has submitted that the prosecution is left with no credible evidence and thus incarceration of the petitioner is totally unwarranted. He submits that the petitioner has no criminal antecedents and thus, he deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner. On instructions from ASI Balbir Singh, he has submitted that though the petitioner was not named in the FIR, however, he has been specifically named in the supplementary statement. He further submits that though the prosecution witnesses PW-1 to PW-4 have not supported the case of the prosecution, however, as per settled proposition of law the complete deposition of a hostile witness is not to be discarded and relevant portion of his deposition which is consistent can always be relied upon. He submits that out of total

17 prosecution witnesses, 7 witnesses have been examined so far. He further submits that as per the instructions received, the petitioner is not involved in any other case.

Heard.

Evidently, the petitioner was not named in the initial two versions made by the complainant i.e. the missing report and thereafter, in the complaint on the basis of which FIR was lodged. However, he was named for the first time in the supplementary statement which was recorded on 11.04.2021. The DNA report received also remained inconclusive. Besides this, the material witnesses i.e. PW-1 to PW-4, who are the complainant and other relatives of the deceased, have also not supported the case of the prosecution. There is nothing on record to show that the petitioner has any criminal antecedents. The veracity of the allegations would be evaluated by the trial Court only after appreciation of complete evidence to be led by both the parties. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial would take sufficiently long time for its conclusion.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate.

Nothing said herein shall be treated as an expression of opinion on the merits of the case.

06.01.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No