

CRM-M-1314-2023

Date of decision: 16.01.2023

RINKU @ KALA

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Ishan Khetarpal, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

VIVEK PURI, J. (ORAL)

Custody certificate of the petitioner has been circulated today and the same is taken on record.

Rinku @ Kala-petitioner is seeking regular bail in the case bearing FIR No.282 dated 09.10.2021 under Sections 148/149/323/427/506 IPC (Section 304 IPC added later on), registered at Police Station Kalayat, District Kaithal.

Learned counsel for the petitioner contends that Balkar, co-accused has been granted regular bail by this Court in terms of order dated 14.12.2022 passed in CRM-M-43930-2022. Balkar was named in the FIR but the petitioner has been nominated on the basis of the disclosure statement of Balkar and Sultan, the co-accused.

Learned State counsel has not disputed the factual aspects as putforth by the learned counsel for the petitioner.

Balkar, the co-accused has been granted regular bail in terms of following order dated 14.12.2022 in CRM-M-43930-2022:-

“This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.282 dated 09.10.2021 registered under Sections 148, 149, 323, 427, 506 IPC (Section 304 IPC added later on) at Police Station Kalayat, District Kaithal.

Learned counsel for the petitioner has submitted that the

petitioner has been in custody since 16.07.2022 and the investigation is complete and the challan has already been presented and there are 20 witnesses, out of which, none have been examined and thus, the trial is likely to take time. It is further submitted that no specific injury has been attributed to the present petitioner with respect to the complainant. The allegation with respect to the pressing of the neck of the deceased has been levelled against the co-accused Sunil @ Soni and the alleged incident had taken place on 08.10.2021 whereas the complainant Krishan had died on 12.10.2021. It is further submitted that the MLR of the deceased would show that out of 4 alleged injuries, 3 injuries are stated to be complaints of pain and the 4th injury is a bruise and as per the opinion of Dr.Sandeep Raju in the Government Medical College & Hospital, Chandigarh, Department of Forensic Medicine & Toxicology, the cause of death is stated to be on account of natural cause. It is stated that even as per the opinion of the Board, it has been stated that the strangulation, if proved by corroboration with circumstantial evidence, could have accelerated the disease present in the victim. Reference has also been made to Annexure P-6 which shows that the injury allegedly suffered by the complainant was simple in nature. It is further stated that it is not the case of the prosecution that any of the accused had the knowledge that the deceased was suffering from some medical condition. Learned counsel for the petitioner has relied upon a judgment of the Delhi High Court reported as 2015 SCC OnLine Del 9756 titled as Aas Mohammad Etc. Vs. State, to contend that even in a case wherein the accused had picked up a bag (theli) of weights and had given blows with it as well as fist blows on the chest and abdomen of his father Nek Shah and the death had been stated to be caused due to coronary artery disease, it was observed that offence under Section 304 of IPC was not made out. It is submitted that, at any rate, even the

allegation of pressing of neck of the deceased has not been levelled against the present petitioner. Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the petitioner is involved in one more case.

Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in "Maulana Mohd. Amir Rashadi vs. State of U.P. and another", reported as 2012 (2) SCC 382 to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

"As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc."

This Court has heard learned counsel for the parties and has perused the paper book.

The petitioner has been in custody since 16.07.2022 and the investigation is complete and the challan has already been presented and there are 20 witnesses, out of which, none have been examined and thus, the trial is likely to take time and no specific allegation has been levelled against the present petitioner in the FIR with respect to him having caused any injury to the complainant Krishan. The incident in question had taken place on 08.10.2021 whereas the complainant Krishan had died on 12.10.2021. A perusal of medical opinion dated 21.01.2022 would show that the cause of death in the present case was stated to be "Fibrinopurulent Pericarditis complicated with Focal Acute myocarditis and Lobar Pneumonia, a natural cause". Thus, as per the opinion of Dr. Sandeep Raju in the Government Medical College and Hospital, Chandigarh, Department of Forensic Medicine & Toxicology, the cause of death was natural. The opinion of the Board constituting Dr. Amandeep Singh and Dr. Mohit Chauhan, dated 17.05.2022 is reproduced hereinbelow:-

“Based upon the above findings, board is of the opinion that the cause of death is same as given by doctor “Fibrinopurulent pericarditis complicated with focal acute myocarditis and lobar pneumonia, a natural cause”. However, strangulation mark as reported by examining ENT doctor which is supported by the possible injuries seen on NCCT and if further proved by corroboration with circumstantial evidence proves alleged history of strangulation and thus could have accelerated the disease present in the victim.”

A perusal of the said opinion would also show that it had been opined therein that in case strangulation was proved by further corroboration after considering the circumstantial evidence, then the same could have accelerated the disease present in the victim. A further perusal of the said report would show that the cause of death stated by the said Board was similar to the cause of death stated by Dr.Sandeep Raju and the said cause was stated to be a natural cause. The question as to whether in such circumstances, Section 304 IPC is made out or not, would be determined during the course of trial. At any rate, as per the FIR, it was not the petitioner who had pressed the neck of the complainant.

Keeping in view the above said facts and circumstances and in view of the law laid down in Maulana's case (supra), the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.”

It has not been disputed that the petitioner has not been named in the FIR though Balkar, the co-accused was named in the FIR. The petitioner has been nominated as an accused on the basis of disclosure statement of the co-

accused. The petitioner is in custody since 16.07.2022 and is not involved in any other case. So far no witness has been examined. The conclusion of trial is likely to take sometime. The petitioner has also becomes entitled to bail on the principle of parity. The petitioner be released on bail in the same terms and conditions as passed in CRM-M-43930-2022.

The petition is allowed accordingly.

16.01.2023

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(VIVEK PURI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No