

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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CRM-M-2767-2024

Gaurav @ Gora

.....Petitioner

Vs.

State of Haryana

.....Respondent

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Reserved On.: 05.03.2024  
Pronounced On: 14.03.2024  
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CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: Mr. Anshumaan Dalal, Advocate  
for the petitioner.

Mr. Sumit Jain, Addl. AG, Haryana.

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DEEPAK GUPTA, J.

Prayer in this petition filed under Section 439 Cr.P.C, is for grant of regular bail in case FIR No.452 dated 27.07.2022 under Section 346 of the IPC [Challan presented under Section 304, 346, 202 of the IPC – Charges framed u/s 302,346, 202 IPC] registered at Police Station Kharkhoda, District Sonipat, Haryana.

2. Status report by way of an affidavit dated 3.3.2024 of Shri Nar Singh, HPS, Assistant Commissioner of Police, Kharkhoda, Sonapat has been filed on behalf of respondent- State.

3.1 FIR was lodged on the statement of Deepak son of Bijender resident of Garhi Sisana, District Sonipat made on 27.07.2022, as per which his

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elder brother Mukesh had left home on 25.07.2022 at about 08:00 p.m. and had not returned till that time. It was also disclosed that entire family had made search for his brother Mukesh but in vain. Mobile No.9306606207 of Mukesh was found switched off. On the basis of this statement, FIR was initially registered under Section 346 IPC.

3.2 During the course of investigation, dead body of Mukesh was found on 27.07.2022 in a water logged field of Village Garhi Sisana. FSL team was called at the spot. A bottle filled with water from the incident site was taken into possession. Mobile phone of the deceased was produced by complainant. Post-mortem was got conducted at General Hospital, Sonapat. Statement of witnesses were recorded. In the supplementary statement made by the complainant he expressed suspicion that his brother Mukesh might have been taken away by Gaurav @ Gora i.e. petitioner (brother-in-law of his sister), as both of them used to sit together and drink alcohol.

3.3 Further prosecution case is that on 08.08.2022, petitioner was produced by Rajesh son of Ran Singh before the Investigating Officer, as petitioner had made extra-judicial confession to have committed the crime. Petitioner was arrested. On interrogation, he suffered disclosure statement, copy of which is Annexure R-1 and based thereon, Sections 304 & 202 of the IPC were added. On 10.08.2022, a pen drive containing CCTV footage was also produced by the complainant in order to show that deceased Mukesh was taken away by the petitioner in his car. Call detail records of the mobile of the deceased and that of the petitioner were also collected.

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3.4 After conclusion of investigation, final report under Section 173 Cr.P.C. was filed for prosecuting the petitioner under Sections 346, 304 & 202 IPC. However, learned Court framed the charges against the petitioner under Sections 302, 346, 202 of the IPC.

3.5 Status report also reveals that there are 25 witnesses cited by the prosecution, out of which 05 have already been examined and the case is now fixed for 28.03.2024 for remaining evidence.

4. It is contended by learned counsel for the petitioner that petitioner has been falsely implicated; that petitioner was not named in the FIR, which was registered against unknown person; that FIR was lodged two days from the time when Mukesh went missing; that FIR was lodged after recovery of the dead body; that as per the post-mortem report, lumen of larynx and trachea contained water mixed with mud, indicating that deceased died due to inhalation of water in mud; that deceased was heavily drunk as his stomach contained strong odour, indicating that deceased fell on the side of the road in the drunken condition and died. Learned counsel also submits that petitioner has been implicated on the basis of alleged extra-judicial confession made before Rajesh son of Ran Singh on 08.08.2022 but said Rajesh during trial has not supported the prosecution case. Learned counsel for the petitioner further submits that case of the prosecution is dependent upon circumstantial evidence and that trial is likely to take long time; that petitioner is in custody for the last more than 01 year and 06 months and so, in all these circumstances, he be allowed bail.

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5. Learned State counsel does not dispute the fact that case is dependent upon circumstantial evidence. However, strongly opposing the bail petition, it is urged that as per the CCTV footage contained in the pen drive, which was provided by the complainant, petitioner was found to have taken the deceased in his car. The call detail records of the deceased and the petitioner also confirm that both of them were together on 25.07.2022. Learned State counsel further draws attention towards disclosure statement (Annexure R1) suffered by the petitioner, confessing the guilt and contends that in all these facts and circumstances, petitioner is not entitled to be released on regular bail.

6. I have considered submissions of both the sides

7. Though, petitioner was produced by Rajesh son of Ran Singh on 08.08.2022 by stating that petitioner had made extra-judicial confession before him, but said Rajesh son of Ran Singh, when appeared in the witness-box during trial on 15.02.2024, did not support the prosecution version, as is evident from his statement, copy of which has been placed on record. However, respondent- State also relies upon the CCTV footage so as to contend that petitioner and the deceased were together on 25.07.2022 and that said fact is also evident from the call detail records.

8. Apart from the CCTV footage and call detail records so as to prove the circumstance of last seen evidence against the petitioner, learned State counsel also refers to the disclosure statement Annexure R-1 of the petitioner, as per which the petitioner and the deceased were together on the night of 25.07.2022; that they had drunk together; that as the petitioner had to

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go somewhere else, he asked the deceased to get down from the car and as deceased refused to do so, the petitioner caught hold of him and made him to get out of the car. As slippers and mobile phone of the deceased were left in the car, he picked the slippers and kept in the paddy fields near Mukesh and threw the mobile phone. After sometime, he thought it was not proper to leave deceased Mukesh at night time till he woke up, so he went down from the car and saw that Mukesh was lying face down in the water in the fields. He tried to move Mukesh but he did not get up. Petitioner became nervous and scared and came home.

9. The story as projected by the petitioner in the disclosure statement is contradicted by the post-mortem report to be read with the FSL report. Perusal of the post-mortem report (Annexure P-2) would reveal that following external injuries were found on the person of deceased Mukesh.

- i. *Reddish contusion of size 04 x 03 cm present over the left temporo occipital region of scalp situated 03 cm behind the left ear and 06 cm from external occipital protuberance. On dissection, underlying tissues were ecchymosed.*
- ii. *Multiple reddish abrasions of size varying from 01 x 01 cm to 2.5 x 01 cm were present over the anterior aspect of right knee joint and shin of right leg in the upper 2/3rd region.*

Post-mortem report further reveals that the stomach of the deceased contained semi digested food material, which was emitting strong alcohol like odour, indicating that deceased was heavily drunk. Even in the general description of the dead body, it is mentioned that the same was emitting foul smell.

10. In case, petitioner had simply made the deceased Mukesh to get down of the car, it is not explained as to how the deceased got injuries over left temporo occipital region of the scalp.

11. Not only above, the FSL report further indicates that water collected from the side, where the dead body of the deceased was recovered, was analyzed, apart from the bone described as humerus of the deceased. The cloth parcel containing the dark blue colored cut and tom pants and tom underwear of the deceased were also analyzed. The result of examination is as under:

- i. ***Diatoms were detected in exhibit-3 (Water sample). However, diatom could not be detected in exhibit-2 (Bone).***
- ii. ***Human semen was detected on exhibit-5a (Pants) & exhibit-5b (Underwear).***
- iii. *Saliva could not be detected on exhibit-5a (Pants) & exhibit-5b (Underwear).*
- iv. *Blood was detected on exhibit-5a (Pants) & exhibit-5b (Underwear).*

12. Thus, it is apparent from the aforesaid report that though diatoms were detected in the water sample collected from the spot, from where the dead body was recovered but no such diatoms were detected in the bone of the deceased, indicating that he had not inhaled the water after being thrown in the water fields. This further indicates that Mukesh had already expired before he was thrown in the water logged fields.

13. Learned counsel for the petitioner, when confronted with the aforesaid report of the FSL showing the absence of diatom in the bone of the

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deceased, contends that it does not necessarily mean that deceased had expired prior to fall in the water logged fields. Learned counsel has relied upon an Article as published in the Indian Journal of Forensic and Community Medicine, wherein a case study has been discussed, in which though diatom was detected in the water sample, but diatom could not be detected in the humerus bone, as in the present case. However, in the case as referred in the Article, the crime scene report stated that water level was 7-8 feet deep, where the dead body was found; that CCTV footage showed that the deceased was lifting drums from a factory and placing them just besides the water tank, where his body was found and no other person was found around the area and it is after considering the said crime scene report that Board of Doctors had opined that no definite scientific reason could be given regarding the cause of death. It was also taken into consideration that there were no injuries over the body of the deceased, all the reports were negative and that time of incident was winter, where the temperature of the water could be very low. So it was in these circumstances that possibility of diatom negative drowning or dry drowning, was held to be not ruled out.

14. I am afraid that no advantage of the aforesaid case study can be given to the petitioner, having regard to the facts of the present case, inasmuch as in present case, injuries on the body of the deceased have been found as mentioned in the postmortem report; as per the own disclosure statement of the petitioner, he was present at the time of incident and the incident occurred in the month of July and not in the winter.

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15.           Apart from above, the presence of human semen on the pants and underwear of the deceased *prima facie* indicate that deceased was also subjected to sodomy and so, it is not a simple case of the petitioner having tried to make the deceased get down of the car.

16.           In this regard, learned counsel for the petitioner refers to NCBI Bookshelf taken from the StatPearls internet on the topic of 'Postmortem Changes' in order to contend that the rigor of the dartos muscle in the scrotum may lead to post mortem ejaculation of semen and may get wrongly interpreted to sexual activity just before death. Learned counsel also contends that it is not the case of the prosecution that deceased was subjected to sodomy prior to his death nor the Trial Court has framed charges under any such provision.

17.           I am afraid that contention of the petitioner does not contain merit, as it will a matter of evidence as to whether the deceased was subjected to sodomy or not, but at this stage, the Court cannot ignore the result of the FSL report, disclosing the presence of human semen on the clothes of the deceased. The expert witness is required to be examined during trial as to whether the presence of semen would be the result of postmortem ejaculation as is contended by the counsel for the petitioner.

18.           The entire discussion as above would reveal that there is strong circumstantial evidence against the petitioner showing his complicity in the crime not only subjecting the deceased to sodomy, but also causing his culpable homicide amounting to murder.

19. Considering all the aforesaid facts and circumstances and the gravity of the offence entailing punishment up to death but without commenting anything further on the merits of the case, this court is not inclined to admit the petitioner on regular bail.

As such, this petition is hereby dismissed.

(DEEPAK GUPTA)  
JUDGE

March 14, 2024  
Neetika Tuteja/sarita

|                           |        |
|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |