

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

218 CRM-M-10964-2024

Date of decision: 01.05.2024

Ganesh Kumar ... Petitioner

VS.

State of Haryana ... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Dr. Pankaj Nanhera, Advocate and
Mr. Rahul Gautam, Advocate for the petitioner
Mr. GS Dhillon, AAG Haryana
Mr. Amandeep Bidhan, Advocate for the complainant

Sandeep Moudgil, J.

The petitioner seeks regular bail in case FIR No.106 dated 01.07.2022 under Section 346 IPC (Sections 302 & 201 IPC added later on) registered at Police Station Bhupani, District Faridabad.

Learned counsel for the petitioner contended that the alleged incident took place on 27.06.2022 around 9.00 pm and thereafter, FIR was registered on 01.07.2022 after considerable delay, initially under Section 346 IPC as a case of missing of Sonam – sister of the complainant. He submits that except the disclosure statement of the petitioner which was got recorded by the police, neither there is recovery of a dead body nor there is any incriminating material/evidence to connect the petitioner with the alleged offence.

It is then vehemently argued that the petitioner was subjected to third degree torture at hands of the police officials, as is evident from the orders dated 26.08.2022 (Annexure P2) passed by JMIC, Faridabad granting liberty to the petitioner to proceed against the erring officials and in pursuance thereto, CRM-M-43362-2022 has been filed for taking strict action against the

police officials. He urged that the trial is going to take long time to conclude inasmuch as out of total 24 cited witnesses, only 1 witness has been examined after framing of charges on 14.12.2022.

Learned State counsel has produced custody certificate dated 30.04.2024, which is taken on record. According to the said custody certificate, the petitioner has undergone 1 year 9 months and 3 days of custody so far. He submitted that during investigation, on the application of the complainant, it was revealed that petitioner–Ganesh and his relatives had concealed Sonam somewhere and they would commit her murder and thereafter on 29.7.2022, the petitioner was arrested and in his disclosure statement, he admitted that Sonam was living with him in live-in-relationship and he had committed the murder of Sonam by pressing her neck, and thereafter, on 27.6.2022, he kept her dead body in an iron box and threw it in the Agra Canal under KGP bridge. It is further averred that on 29.08.2022, the Santro Car No.KA-05-MC-1646 recovered from the petitioner, was inspected and blood stains were taken from the *stepney* lying in the *dikki* of the car, the FSL report of blood sample of mother of Sonam is awaited. He then argued that there are three other cases pending against the petitioner and as such, if the concession sought for is granted, the petitioner may tinker with the evidence and witnesses.

Heard learned counsel for the parties and gone through the record.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “***Baljinder Singh alias***

Rock vs. State of Punjab” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

As regards admission of the petitioner in the disclosure statement made in police custody, the same has no relevance especially in view of the fact that the petitioner was subjected to third degree torture by the police officials as has been recorded vide orders dated 26.08.2022 (Annexure P2) regarding which a petition is also pending before this Court. This casts serious aspersions on the conduct of the police officials in so far as the alleged ‘admission’ made by the petitioner in police custody is concerned. That apart, the corpse recovered from the Agra Canal has yet not been confirmed to be that of Sonam.

Taking into consideration the totality of the circumstances particularly the fact that trial in the present case is moving at a snail’s pace as out of 24 witnesses, only one witness has been examined so far and in that eventuality, it is abundantly clear that it will take certainly long time to conclude and detaining the petitioner behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle “Bail is a rule, jail is an exception” as elucidated in the

judgement of Apex Court in “*Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22*”.

Accordingly, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

01.05.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No