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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-12458-2023 (O&M)
Date of decision : 30.01.2024

PROMILA DEVI ....Petitioner

Versus

STATE OF PUNJAB ....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Manoj R. Sharma, Advocate
for the petitioner.

Mr. Iqbal S. Mann, DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

CRM-1501-2024

This is an application for placing on record statement and cross-examination of PW-1 and P-2 marked as Annexures A-1 and A-2.

For the reasons recorded in the application, the same is allowed. Documents marked as Annexures A-1 and A-2 are taken on record subject to all just exceptions.

CRM-M-12458-2023

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.181 dated 09.08.2022 registered for the offence punishable under Section 304 of the Indian Penal Code and Section 29 of Narcotic Drugs and Psychotropic Substances Act,

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1985 at Police Station City Gurdaspur, District Gurdaspur.

2. As per the contents of the FIR it has been alleged as under :

> "xx Stated that I am resident of abovesaid address and I am labourer by profession. I have two children, elder is son namely Harsh, age 21 years and younger from him is daughter named Janvi, age 19 years. Yesterday, on dated 08.08.2022, there was birthday of my son, due to which he was demanding Rs. 5,000/- from my wife for the purpose to give party to his friends, then my wife by handing over 500/- to baring RC No: CH01-CH-9972 was seen parked on the road at one side ahead to White Restaurant and Ishav was standing near to car, who on seeing us, ran away from the spot and when we reached near the car then we saw that my son Harsh was lying on rear seat, who was unconscious and was not reacting and we took him to Civil Hospital, Gurdaspur where the doctor checked him and told us that he had died. Due to giving overdose of heroine to my son Harsh by Ishav Kumar, my son Harsh has been died. I by keeping dead body at mortuary house, Civil Hospital, Gurdaspur, I was going to intimate you and you met. Legal action may be taken, sd/- Davinder Kumar xxx"

3. Custody Certificate of the petitioner has been produced, which is taken on record. As per the same the petitioner has undergone actual custody of 1 year, 5 months and 21 days and has one more case pending against her under the NDPS Act i.e. FIR No.91 dated 22nd of May, 2022 *qua* offence punishable under Section 21-A of the NDPS Act, at Police Station Dina Nagar.

4. Counsel for the petitioner has placed on record testimony of Davinder Kumar, the complainant and his wife Aarti i.e. parents of the

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deceased-Harsh, to submit that none of them has supported the case of the prosecution. He refers to the cross-examination of Davinder Kumar, which reads as under :

> "Stated that I am doing labour work. I had one son namely Harsh who was aged above 21 years at the time of occurrence. Jahnvi is my daughter who is younger to deceased Harsh. On 08.08.2022, it was birthday of my son Harsh and he demanded Rs.5,000/- from my wife Aarti for giving party to his friends. My wife Aarti gave Rs.500/- to my son and told him that she will give remaining amount to him in the evening. At about 2:00 PM Jasbir Singh son of Mohabbat Singh along- with Jasbir Singh @ Preet, who were friends of my son and their proceedings were pending before Hon'ble Court which they had attended with my son and Hon'ble Court had sent both these persons to Central Jail, Gurdaspur. On the same day, accused Inshav Kumar present in the Court was driving a car bearing No. CH-01-CH-9972 and took my son Harsh along-with him. Ishav Kumar took my son to Paniar and they got intoxicating substances from Prolima Devi present today in the Court and hal administered heavy dose of heroin to my son Harsh due to which my son Harsh diedIshav Kumar carried dead body of my son in his car. When we could not find my son, we kept on searching for him. When we reached near Grain Market and in front of one resort we found accused Ishav Kumar standing there along-with his car. On seeing us Ishav Kumar fled away and when I opened the car, dead body of my son was lying on the back side seat of the car left behind by accused Ishav Kumar. I had taken my son to Civil Hospital, Gurdaspur where he was declared as dead and his dead body was deposited in the mortuary. My statement Ex.P1 was recorded by the police. I have seen accused Ishav Kumar and Promila Devi today in the Court and I identified both the accused."

5. State Counsel is not in posititon to dispute the factual

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assertions made by counsel for the petitioner based on record.

6. I have heard counsel for the parties and have gone through records of the case.

7. Without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and the fact that the material witnesses have not supported the prosecution, the present petition is allowed. The petitioner is ordered to be released on bail on her furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/ Duty Magistrate concerned.

8. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

(i) The petitioner shall not mis-use the liberty granted.

(ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.

(iii) The petitioner shall not absent herself on any date before the trial.

(iv) The petitioner shall not commit any offence while on bail.

(v) The petitioner shall deposit her passport, if any with the trial Court.

(vi) The petitioner shall give her cellphone number to the police authorities and shall not change her cell-phone number without permission of the trial Court.

(vii) The petitioner shall not in any manner try to delay the trial.

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9. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

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

January 30, 2024 **(Pankaj Jain)**
Dpr **Judge**

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

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