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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Date of decision : November 14, 2024

Kamlesh and another

....Petitioners

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. DS Virk, Advocate, for the petitioners
Mr. Bhupender Singh, DAG, Haryana

KULDEEP TIWARI,J. (ORAL)

1. Through the instant petition filed under Section 439 Cr.P.C. the petitioners pray for grant of regular bail in case FIR No. 262 dated 13.6.2023, under Sections 302, 34 IPC, registered at Police Station Sadar Sirsa, District Sirsa.

2. At the very outset, learned counsel for the petitioners seeks permission to withdraw the prayer for the grant of regular bail to petitioner no. 2-Ajay Kumar , at this stage.

3. The present petition is **dismissed as not pressed**, at this stage qua petitioner no. 2-Ajay Kumar.

4. So far as petitioner no. 1-Kamlesh is concerned, learned counsel for the petitioner, in asking for the relief (supra), submits that the

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case of prosecution hinges upon the extra judicial confession, as made before one Vinod Kumar son of Bagirath, who is stated to be son-in-law of the present petitioner. He submits that, in fact, relationship between the daughter of the present petitioner, and Vinod Kumar was not good, and thereupon, a decree of divorce has already been passed way back in the year 2018, for which he placed reliance upon Annexure P/6, therefore, no question arise to make extra judicial confession in front of Vinod Kumar. He further submits that so far as the allegations in the FIR (supra) are concerned, it is specifically mentioned by the complainant that all the three persons i.e. the present petitioner, her son Ajay and the deceased, who is husband of the present petitioner, are habitual drinkers. He further submits that the allegations, are that the accused persons, threw the deceased from the stairs, which led to his death i.e. husband of the present petitioner. He in return submits that, whether, the petitioner died because of the fact that he himself fell down the stairs, or on account of him being under the influence of alcohol, or the petitioner gave a push to him, is the core issue, which is to be adjudicated by the learned trial court concerned, at the time of adducing evidence.

5. The instant case has been registered on the allegations made by one Nawab @ Gulab son of Banwari Lal, who is brother of the deceased. The relevant extract of the statement of Nawab @ Gulab, which forms the part of the FIR reads as under:-

“Statement of Nawab @ Gulab S/o Banwari Lal r/o village



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Fefana, Tehsil Nohar, District Hanumangarh (Rajasthan), aged about 55 years Mob. No.9509040049, stated that I am resident of above mentioned address and doing the work as a labourer. We are seven brothers. My real brother Atma Ram is residing at Ara Basti, Khaja Khera, Sirsa with his family, who is doing the job of sweeper (SAFAI KARAMCHARI) in M.C. Sirsa. He is having one son Ajay Kumar aged about 22 years. My brother was residing with his wife Kailash aged about 45 years and his son Ajay. My brother Atma Ram, his son and wife Kailash all three used to come for drinking liquor. On the intervening night of 12/13.06.2023, at about 4:00 a.m. Kailash W/o my brother and Ajay s/o my brother threw away my brother Atma Ram from the stairs of the house by giving pushes to him and by giving beatings to him with bamboo stick, due to which, he succumbed to his injuries. On 13.06.2023, my son-in-law Vinod Kumar S/o Baga Ram R/o Sahawa told me that Atma Ram has been murdered by his son Ajay and wife Kailash, upon which, I along with my family members reached at the house of my brother Atma Ram, where dead body of Atma Ram was lying on the cot, who is having injuries marks on his face, neck, chest, back and foot. My BHABI (sister-in-law) Kailash and nephew (BHATIJA) Ajay are present in the house, who told to me and my brother Raj Kumar that we have killed Atma Ram in the night mistakenly by giving beatings to him with bamboo sticks and by throwing him away from the concrete stairs constructed in the house. Kindly pardon us.”

6. Learned State counsel filed custody certificate qua the petitioner today in Court, and the same is taken on record. He opposed the grant of regular bail to the petitioner-Kamlesh, and submits that the petitioners specifically made extra judicial confession before Vinod Kumar. He further submits that the death has occurred in the house of the present petitioner, therefore, onus lies upon the petitioner to explain the reasons of



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death. Finally, he submits that the deceased suffered three injuries which clearly reflect that it is a case of homicide. He, after having instructions from the quarter concerned, further submits that out of total 14 witnesses, 3 witnesses have already been examined, and the examination-in-chief of 2 witnesses has already been recorded.

7. This Court considered the submissions made by learned counsel for the parties concerned, and is of the view that petitioner no. 1-Kamlesh deserves to be released on regular bail for the hereinafter extracted reasons:-

- (i)that the petitioner is a lady, and suffered incarceration of 01 year, 04 months and 29 days as on today and not involved in any other case**
- (ii)the trial is at initial stage and conclusion of trial would take a long time;**
- (iii)there are no allegation that the present petitioner and her husband (deceased) have strained relations;**
- (iv)the veracity of the allegations is yet to be established by the prosecution during the course of trial.**

8. In view of the facts and circumstances recorded above, the present petition is **allowed**.

9. The petitioner no. 1-Kamlesh is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.



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10. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

November 14, 2024
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(KULDEEP TIWARI)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>