

CRM-M-26777-2024

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2024:PHHC:076728



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

206

CRM-M-26777-2024

Date of Decision: 29.05.2024

Parwani

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Sunil Chadha, Senior Advocate with
Mr. Raghav Chadha and Ms. Kashish Aggarwal, Advocates
for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

Mr. Saurabh Sharma, Advocate
for Sh. Krishan Kumar/brother of the deceased.

NIDHI GUPTA, J. (ORAL)

Memo of appearance filed on behalf of Sh. Krishan Kumar/
brother of the deceased is taken on record.

The petitioner has filed the present 1st petition under Section
439 of the Code of Criminal Procedure, 1973, for grant of regular bail in
case FIR No. 8 dated 08.01.2024 (Annexure P-1) registered under
Sections 323/34, 342 and 506 IPC (later on Section 306 IPC was added
and Section 506 IPC was deleted) at Police Station Sadar Pehowa,
Kurukshetra.

The aforesaid FIR (Annexure P-1) was registered on the
basis of statement of the victim (since deceased) herself and the brief
facts as mentioned in para No. 2 of the impugned order dated 18.05.2024



(Annexure P-10), are reproduced as under:-

“2. Briefly, the case set up by the prosecution is that on 07.01.2024, a telephonic information was received from Saraswati Mission Hospital regarding admission of Nanhi Devi wife of Suresh Kumar as a poisoning case. On receiving this information ASI Satish Kumar alongwith the police officials reached there and came to know that the patient has been referred to a higher center. Subsequently, they against received a ruqqa that Nanhi Devi is admitted in Shah Hospital, Kaithal. On receiving this information, ASI Satish Kumar alongwith the police officials reached there and moved an application to the doctor to obtain his opinion regarding the condition of the patient, who declared her unfit to give the statement. On 08.01.2024, when the patient was called and she record the statement of Nanhi Devi, who has stated that “yesterday Sanju, his mother, Suresh and other people did not allow her to enter the house. All of them have beaten her up on the road. Then they dragged her inside the house wherein she was confined in a room after bolting the same so that she cannot run away. She was badly beaten up. She has been harassed a lot. Balwan Singh and Pillu were also part of this. She got fed up. She took some medicine 3-4 days ago.” After obtaining the certified copy of the statement, First Information Report under Section 323, 342, 506, 34 IPC was registered. Investigation was began. During the investigation, they met Krishan Kumar and recorded his statement. Rough site place of the occurrence was prepared. Statements of the witnesses were recorded. On 09.01.2024 information was received that Nanhi Devi has expired during the treatment. The proceedings under Section 174 Cr.P.C. and post mortem were got conducted and thereafter, the dead body was handed over to the legal heirs. The puke of the deceased was taken into police possession. Nanhi Devi has taken the poisonous substance as she was harassed by the people mentioned in her statement. Subsequently, Section 306 IPC was added. The Look Out Circular of Ram Kumar son of Surjan Singh and Vishal Kumar son of Suresh Kumar were got issued. On 14.02.2024, applicant-appellant Parwani Devi, Krishan @ Pillu and Balwan Singh son of Bhana were arrested, who suffered their disclosure statements and got the place of occurrence demarcated. On 04.03.2024, scaled site plan of place of occurrence was prepared. The samples were deposited in RSFL Panchkula. The arrest of Ram Kumar and Vishal Kumar is still pending. After the completion of challan against applicant-accused along with co-accused Balwan Singh and Krishan @ Pillu has already been presented before the Court for trial.”



Learned Senior Counsel for the petitioner, *inter alia*, submits that the petitioner is 84-years-old, mother-in-law of the deceased. She has been in custody since 14.02.2024. The aforesaid FIR was registered on the basis of the statement of the victim/deceased herself who had stated that she had consumed some poisonous substance on 07.01.2024 and as a consequence of which she died on 09.01.2024. Learned Senior Counsel for the petitioner refers to the statement of Krishan Kumar/brother of the deceased dated 09.01.2024 (Annexure P-5) (at page 35 of the paper-book), wherein he had admitted that marriage of the deceased was solemnized with Suresh Kumar/son of the petitioner herein about 33 years ago. Three children i.e. 02 sons and one daughter were born out of the said wedlock. Thereafter, son of the petitioner had gone abroad. It is also stated in the statement (Annexure P-5) that “*My Jija Suresh Kumar had constructed a house at Karnal Road, Kaithal for the living of his children where my sister Nanhi Devi along with her children was living*”. It is stated that as such, the deceased used to live in the house at Kaithal; whereas the petitioner is residing at village Bakhli, Police Station Sadar Pehowa, District Kurukshetra, since the past 25 years, therefore, she has nothing to do with the matrimonial house of the deceased.

Learned Senior Counsel for the petitioner further submits that it has been stated in the alleged dying declaration of the deceased that she had been given beatings and even dragged inside the house and was locked in the room by her son Sanju and the petitioner. However, as per postmortem report, there are no injuries on the person of the deceased, therefore, the said allegation is falsified. Further, there is



nothing on record to suggest that a case of abetment under Section 107 IPC which can constitute an offence under Section 306 IPC is made out. Thus, it is prayed that the petitioner be released on regular bail. In support of his contentions, learned Senior Counsel for the petitioner has relied upon a three Judge Bench judgment of the Hon'ble Supreme Court in **Ramesh Kumar vs. State of Chhattisgarh**, Law Finder Doc ID # **10325**, which is *ipso facto* applicable to the facts of the present case and para 19 of the judgment is hereby reproduced as under:-

“19. The picture which emerges from a cumulative reading and assessment of the material available is this. Presumably because of disinclination on the part of the accused to drop the deceased at her sister's residence the deceased felt disappointed, frustrated and depressed. She was overtaken by a feeling of shortcomings which she attributed to herself. She was overcome by a forceful feeling generating within her that in the assessment of her husband she did not deserve to be his life-partner. The accused Ramesh may or must have told the deceased that she was free to go anywhere she liked. May be that was in a fit of anger as contrary to his wish and immediate convenience the deceased was emphatic on being dropped at her sister's residence to see her. Presumably the accused may have said some such thing- you are free to do whatever you wish and go wherever you like. The deceased being a pious Hindu wife felt that having being given in marriage by her parents to her husband, she had no other place to go excepting the house of her husband and if the husband had "freed" her she thought impulsively that the only thing which she could do was to kill herself, die peacefully and thus free herself according to her understanding of the husband's wish. Can this be called an abetment of suicide? Unfortunately, the Trial Court misspelt out the meaning of the expression attributed by the deceased to her husband as suggesting that the accused had made her free to commit suicide. Making the deceased free - to go wherever she liked and to do whatever she wished, does not and cannot mean even by stretching that the accused had made the deceased free "to commit suicide" as held by the Trial Court and upheld by the High Court.”

Per Contra, learned counsel appearing for brother of the



deceased vehemently opposed the submissions made on behalf of the petitioner and submits that this is not a simpliciter case of an offence under Section 306 IPC, it is a case of dying declaration which is suffered by the deceased before the Magistrate. It is submitted that specific allegations have been levelled against the petitioner and now, the next date of hearing before the learned trial Court is 03.07.2024 for recording the prosecution evidence and accordingly, it is prayed that the present case be adjourned beyond the said date, if, not dismissed today.

Learned counsel for the State has filed custody certificate dated 27.05.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 03 months and 14 days. Perusal of the custody certificate shows that no other case is pending against the petitioner.

On instructions from SI R.N. Mathur, learned counsel for the State has informed that charges have been framed against the petitioner and her co-accused on 01.05.2024 and the next date of hearing before the learned trial Court is 03.07.2024, for recording the evidence of the prosecution. It is further informed that out of total 20 prosecution witnesses, none has been examined so far. Learned counsel for the State prays for dismissal of the present petition, on account of serious allegations levelled against the present petitioner.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the peculiar facts and circumstances of the case; including the custody period of 03 months and 14 days undergone by the petitioner as an



undertrial, and perusal of the custody certificate reveals that there is no other case against the petitioner; and also the fact that out of total 20 prosecution witnesses, none has been examined so far, therefore, conclusion of trial will take considerable time; and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Parwani W/o Mangta Ram, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

Pending application(s), if any, shall also stand disposed of.

29.05.2024
rishu

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No