

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-42888-2023

Date of decision:12.01.2024

Aseem Kataria

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Vaibhav Sharma, Advocate for
Mr. Viraj Gandhi, Advocate for the petitioner.
Mr. Anup Singh AAG Punjab.
Mr. Piyush Setia, Advocate for the complainant.

SUMEET GOEL, J.

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.241 dated 08.09.2022, registered for the offences punishable under Sections 302, 328, 34 IPC (offence under Sections 302/328/32 reduced and offence under Section 306 IPC found against petitioner vide General Dairy Report No.33 dated 26.03.2023 (Annexure P-4) and supplementary challan dated 10.04.2023 (Annexure P-5)) at Police Station Malout, District Shri Muktsar Sahib.

2. The case set up in the FIR in question is as follows:-

“Statement of Gourav Khyrana son of Vijay Kumar Khurana son of Wazir Chand Khurana resident of Street No. 06, Nanak Nagri, Abohar aged about 33 year Mobile No. 99881-19988, Stated that I am resident of above mentioned address and doing the business of commission agent in sabzi mandi, abohar. I have two sisters. Elder sister Babita aged about 39 and younger sister Rachhmi aged about 37 years. I am younger to both my sisters. My elder sister Babita got married before about 10 years with

Aseem Katariya son of Mohan Lal Katariya resident of Street No. 6 Dashmesh Colony, Malout. My sister Babita gave birth to girl child Ammy aged about 9 years. My sister Babita was appointed as teacher in private school. After the marriage of Babita her in laws used to harassed and torturing her. My brother in law Aseem Katariya who was drunker used to beat my sister under the influence of alcohol, my sister stop him for drinking wine, so he usually beat her. In this act of beating brothers of Aseem Katariya namely Bobby Katariya, Kakku Katariya and Dimpy Katariya were supporting their brother Aseem Katariya and beat my sister. Babita told us on phone that her husband Aseem Katariya and his brothers are beating her. So we went to her in laws alongwith our relatives and respectable of our area and they talked about beating of Babita and her in laws felt sorry and asked to excuse and made commitment for not to do so in future. But they again and again beating the Babita and again and again excusing in front of relatives and respectable. Being girl side family we opt to bent upon as there was matter of life of our girl. My sister Babita by considering the future of her girl child continued to live in her in law family. Now from the last 8 - 10 days her husband Aseem Katariya and his brothers Bobby Katariya, Kakku Katariya, and Dimpy Katariya sons of Mohan Lal Kataria resident of Malout daily beat her. So my sister Babita told on telephone on 6.9.2022 on about 7 pm that her husband and his brothers are beating her and they kill her and I love my life and I want to live for my girl child. Come and bring me with you. I replied that we will come tomorrow alongwith relatives and respectable. Yesterday at about 12.00 in day I alongwith my father Vijay Kumar son of Wazir Chand, my uncle Roshan Lal son of Wazir Chand and Rakesh Kumar son of MadanLal residents of Abohar reached in residence of in Law of my sister Babita, then Bobby Katariya was holding legs of my sister and Kakku Katariya was holding and pulling right arm of Babita and Babbi Katariya was holding and pulling left arm of my sister and my brother in law by sitting on stomach and holding neck of my sister was forcibly putting some poisonous item in her mouth. These persons on seeing us left Babita and in the meantime my sister Babita suffer vomiting, as some poisonous item passed in her body and and she became uncountious. We brought her in civil hospital malout for treatment, where doctor sahib checked my sister and told that my sister is dead. We put body of deceased in mortuary house of the hospital and informed our relatives, they were reaching on the spot. Yesterday we were in tension due to death of our sister Babita, Sipahi Kamaljit Kour No. 445/ Sr. Sipahi

Jagdeep Singh No. 1229, PHG Sher Singh 12054 riding on the Government Vehicle No. PB30G2976 driver of the vehicle sipahi Harbhajan Singh No.1520 left for civil hospital malout reached and where brother of deceased Babita Gourav Khurana and father Vijay Kumar Khurana son of Wazir Chand resident of Abohar were present alongwith their relatives and Gourav Khurana recorded his statement before SI/SHO and the statement was R.O.A.C and he signed in english considering the same right as a witness Vijay Kumar Khurana put his signature also and I certified that. As per statement and medical information No. 741 dated 7.9.2022 Babita died due to beating and by giving poisonous drink, which found is crime u/s 302,328,34 IPC. Case registered on statement for the crime against Aseem Katariya, Bobby Katariya, Kakku Katariya, and Dimpny Katariya sons of Mohan Lal Katariya and after writing being sent to Police Station through PHG Sher Singh No, 12054. Case be registered and No. be informed. I/C PCR/SMS be informed. Special reports be issued. SI/SHO leaving alongwith colleague staff for investigation. Sd/- Varun Kumar SI Chief Officer, Police Station City Malout dated 8.9.2022.

3. Learned counsel for the petitioner has argued that the marriage of the petitioner-accused was solemnized with the deceased about 10 years back; one female child was born out of the wedlock who is aged about 09 years & there was no substantial allegations against the petitioner for maltreating the deceased during this period. It is further submitted that, by way of supplementary challan, the Police has now invoked only Section 306 IPC against the present petitioner. In this regard, learned counsel for the petitioner has placed reliance upon paragraph 5 of the status report filed by State of Punjab, relevant whereof reads as under:-

“5. That the petitioner is in judicial custody since 09.09.2022. The challan for offences under u/s 302, 328, 34 IPC was filed in the learned court on 08.12.2022 but later on, after investigation conducted by the SIT, the supplementary challan for offence under Section 306 IPC was filed in the learned court on

06.07.2023 and it was also prayed for discharged the accused in offences under Sections 302, 328 & 34 IPC.”

Learned counsel for the petitioner has relied upon judgments of this Court passed in CRM-M-27938-2013 titled as ***Ashwani Kumar vs. State of Punjab***, decided on 30.06.2014 and CRM-M-39189-2021 titled as ***Manju vs. State of Haryana***. It is submitted that culmination of the trial will take long time and hence bail is prayed for.

4. Learned State counsel and counsel appearing for the complainant have opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

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

6. The accused is in judicial custody since 09.09.2022. After investigation of the matter, supplementary challan was presented by the Police on 06.07.2023 for offence under Section 306 IPC only. The question, as to whether the petitioner is liable for offences under Sections 302, 328 & 34 IPC or an offence under Section 306 IPC will be adjudicated upon during the course of trial. This Court does not deem it appropriate to dwell deep into this aspect lest it may prejudice the case of either parties. The custody certificate filed by the State of Punjab does not reflect involvement of the petitioner in any other case. There is no tangible material brought forward to show any reasonable apprehension of the petitioner fleeing from the process of law or tampering with the prosecution evidence. Keeping in view

entirety of the facts and circumstances of the case, this Court does not deem it appropriate to keep the petitioner in further detention.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, 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 himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaq Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

January 12, 2024
Ajay

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