



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

222

**CRM-M No.42588 of 2024 (O & M)
Date of decision : 15.10.2024**

Aarif**Petitioner**
Versus
State of Haryana**Respondent**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Karan Pathak, Advocate, for the petitioner
Ms. Priyanka Sadar, AAG, Haryana

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner in case FIR No.124 dated 25.6.2022, under Sections 304-B and 234 of the IPC, registered at Police Station Rozka Meo, District Nuh.
2. On 23.9.2024, the following order was passed:
 1. *Present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner in case FIR No.124 dated 25.6.2022, registered for the offences punishable under Sections 304-B and 234 of the IPC at Police Station Rozka Meo, District Nuh.*
 2. *The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-*
 - '16. Brief facts of the case: Sir, brief facts of the case are that on 25.06.2022, a telephonic information received in Police*



Station from Police Control Room Nuh that Noorjan wife of Arif resident of Nawabgarh has committed suicide by hanging herself. On receiving this information, ASI Sandeep Kumar along with L/ASI Saroj No. 174/Nuh, CT Amarjit NO. 384, CT Burhan No.81/Nuh on government Sumo being driven by SPO Rajender No. 99/Nuh reached at the house of Arif. Noorjan wife of Arif was hanging in died condition in the room of his house and there was Saliva leaking from her mouth and no family member was present there. After waiting, Muskim son of Sadeeq (brother of deceased) resident of Fatehpur Taga, Police Station Dhauj, District Faridabad along with his family came there who given a complaint, the contents of complaint are that: To, the Station House Officer, Police Station Rojka Meo, District Nuh. Subject: Complaint for taking action against 1) Fanney (Father-in-law), 2) Arif son of Fanney, 3) Farjana daughter of Fanney, 4) Varina wife of Fanney, 5) Asif son of Fanney. residents of Nyangarh, Police Station Rojka Meo, District Nuh. Sir, it is requested that applicant Mustkeem son of Sh. Sadeek is resident of Fatehpur Taga, Police Station Dhau), District Faridabad. The marriage of my sister Noorjan was solemnized to Arif about one year ago and we had given dowry articles as per our financial capacities in the marriage of our sister. We had given one Kg silver, five Tolas of gold ornaments along with motorcycle, Rs. 51000/- in cash and other domestic articles but on next day of marriage, accused Farjana and Vareena started taunting her for dowry and after marriage, the accused were beating my sister for dowry regarding which our sister had informed us after coming home. In this regard, the members of my family along with respectables of the village went to the house of accused. The accused demanded Rs. 1.00 lac and bullet motorcycle. Thereafter our father had given money to the accused on many occasions but however the dowry greedy accused did not stop their demands. Accused Arif and Fanney said that give us Rs. 1.00 lac and Bullet motorcycle, otherwise take your daughter back from here or else we will kill her. Two days back, my sister informed me by making phone call that accused are

2024:PHHC:134480



CRM-M No.42588 of 2024 (O & M)

-3-

beating her for dowry, they could kill her at any time, if you want to see me alive, then take me back from here, otherwise you will get my dead body. My sister was scared and I had comforted her and on 24.06.2022, my sister again made phone call but I could not receive it. On 25.06.2022 at about 12.00 PM (noon), Phanne Khan informed me through telephone that your sister has committed suicide. I along with my family reached on the spot at about 2.30 PM then we found that our sister was hanging with ceiling fan in the room and her feet were hanging one foot below the adjoining bed. That the accused have hanged my sister after killing her. Therefore, you are requested that legal action be taken against the accused for committing murder under the demand of dowry. Dated: 25.06.2022 Sd/- Muskeem son of Sh. Sadeeq, resident of Fatehpur Taga, Police Station Dhauj District Faridabad Mobile No. 8750745112, 8882551574. As per the contents of complaint, offence under section 304-B and 34 of IPC is made out, therefore the complaint has been sent to the Police Station by the hand of CT Amarjit No. 384/Nuh for registration of case, thereafter the above said case has been registered. The investigation of present case is conducted by ASI Sandeep Kumar and during investigation on 25.06.2022, the place of occurrence has been visited, the statements of witnesses are recorded and the proceedings under section 174 of Cr. PC have been done regarding the dead body. Thereafter during investigation, the post mortem of dead body of deceased Noorjan is got conducted through Board of doctors vide PMR No. PME/2022/72 and after post mortem the doctor has written "Cause of death: In our opinion the cause of death is anemorlem hanging however viscera have been preserved and sent for chemical analysis." After post mortem, the dead body is handed over to the family and after post mortem, the parcels of the dead body taken from doctor and deposited in the Malkhana as per procedure, which has been sent for examination to the FSL Bhodsi and FSL Madhuban. Thereafter the investigation of case is conducted by Inspector Jagbir Singh Station House Officer, Police Station Rojka Meo.



During investigation, on 15.09.2022, accused of the case namely Arif son of Raheem Khan Phannee resident of Nawabgarh, Police Station Rojka Meo District Nuh has been arrested as per procedure and after conducting inquiry from him, the accused has got recorded his disclosure statement in police custody without any fear, pressure or greed that I am resident of above noted address. My parents are alive. We are three brothers and three sisters. The marriage of my elder sister Farjana is solemnized with Mubin resident of Chharoda. I am younger to her, younger to me is Arif, younger to him is Ashik, younger to him is sister Frana and youngest is Armana. My marriage was solemnized about one year ago with Noorjan daughter of Sadeeq resident of Fatehpur Taga, Police Station Dhauj, District Faridabad. I used to go with my father on our vehicle. I told my wife Noorjan to bring Rs. 1.00 lac from her parental house but Noorjan has refused to bring this money, due to which, I started harassing her. During intervening night of 24/25.06.2022, I came to my house at village Nawabgarh after about one week from the work with my father and on 25.06.2022, I and my wife Noorjan were alone in the house and remaining members of my family went to market for the purchase of clothes because the marriage of my cousin brother was fixed after two days with cousin sister (daughter of Mausii) of my wife at village Fatehpur Taga. My wife Noorjan was asking to go to her parental house to attend the marriage of her cousin then I told her that if you will bring Rs. 1.00 lac from your parents then I will send you, otherwise I will not send you. Noorjan got stubborn to go to her parental house then I told her I will send you to your parents if you will bring Rs. 1.00 lac from your parents, otherwise I will not send you either you die for it. After telling it, I went to the house of my Tayu and after sometime, when I came back then Noorjan had hanged herself and she was hanging in the room, due to fear, I ran away. Noorjan has committed suicide as I pressurized her to bring Rs. 1.00 lac as dowry from her parents. No other member of my family has knowledge about it. The disclosure statement of accused has been recorded, which is signed by



accused and witnesses. The disclosure statement of accused has been recorded and thereafter the accused is confined in the custody of Police Station.

Thereafter on 16.09.2022, accused Arif son of Rahim Khan Fanney resident of Nawabgarh, Police Station Rojka Meo District Nuh has been presented in the Hon'ble court and as per the order of Hon'ble court, he has been confined in the Judicial District Jail, Nuh, who is presently confined in Judicial in District Jail, Nuh.

Thereafter the verification of the investigation of case is conducted by Sh. Ashok Kumar, Deputy Superintendent of Police HQ, Nuh and during verification of investigation, the accused namely Raheem Khan @ Fanney Khan son of Roshan, Varina wife of Fanney Khan, Farjana daughter of Fanney Khan, Asif son of Fanney Khan residents of village Nawabgarh, who were nominated in this case, were not found to be involved in this case, therefore section 34 of IPC has been deleted in this case. The involvement of Arif husband of deceased Noorjan, resident of Nawabgarh is found in this case. In this case, on 06.10.2022, scaled map of the place has been got prepared through draftsman and his statement has been recorded.'

3. *Learned counsel for the petitioner has argued that the petitioner is in custody since 15.9.2022. Learned counsel has further submitted that the petitioner has been falsely implicated in the FIR in question. Learned counsel for the petitioner has further argued that the offence under Section 304-B of the IPC is not made out from the factual matrix of the case as there was no complaint earlier made on behalf of the victim or her family regarding any dowry harassment being meted out to her by the petitioner. Learned counsel further argued that the first bail petition preferred by the petitioner was dismissed as withdrawn vide order dated 30.1.2024 but the trial is not progressing thereafter & delay in culmination of the trial cannot be attributed to the petitioner. To buttress his argument, learned counsel for the petitioner has relied upon the zimni orders passed by the trial Court dated 15.4.2024, 30.4.2024, 22.5.2024 and 15.7.2024 & has argued that even theailable warrants/non-ailable warrants against serving police officials are not being executed. Thus,*



regular bail has been prayed for.

4. *Learned State counsel has opposed the present petition by arguing that the allegations raised are serious in nature and thus, the petitioner does not deserve the concession of the regular bail. Learned State counsel seeks to place on record custody certificate dated 20.9.2024 in Court, which is taken on record.*

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

6. *The petitioner was arrested on 15.9.2022 whereinafter investigation was carried out and challan stands presented on 7.11.2022. Total 15 prosecution witnesses have been cited out of which 7 stand examined. It is not in dispute that all private witnesses stand examined. The rival contentions raised by learned counsel for the parties; as to whether offence under Section 304-B of the IPC is made out against the petitioner or not in the factual matrix of the case; shall be gone into during the course of trial. A perusal of the zimni orders dated 15.4.2024, 30.4.2024, 22.5.2024 and 15.7.2024 passed by the trial Court brought on record clearly reflect that the concerned police official(s) are not repeatedly tuning up for having their testimonies recorded as prosecution witnesses despiteailable warrants/non-bailable warrants having been issued against them.*

*At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in **Criminal Appeal No.2787 of 2024** titled as **Javed Gulam Nabi Shaikh vs. State of Maharashtra and another**, decided on 03.07.2024; relevant whereof reads as under:-*

“19 If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be



innocent until proven guilty cannot be brushed aside lightly. howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.”

7. Keeping in view the entirety of the facts and circumstances of the case, this Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence. As per custody certificate dated 20.9.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of about two years & is shown not to be involved in any other case.

8. In view of above, the petitioner is ordered to be released on interim 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 cell-phone 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.*

9. 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 interim bail of the petitioner.

10. *Ordered accordingly.*

11. *Before parting with the instant order, another aspect of the matter nay disturbing aspect of the matter requires to be looked into. A perusal of the zimni orders passed by the trial Court shows that despite bailable/non-bailable warrants having been issued against the concerned police official(s), they are not turning up for having their testimonies recorded. The order dated 22.5.2024 passed by the learned trial Court reads as under:*

'The case is fixed for prosecution's evidence. No prosecution witness is present.

NBW issued against PW ASI Sandeep received back unexecuted with the report that he had gone out and that he will be informed about the date fixed, however, he has not appeared in the Court today. Let, fresh NBW be issued against PW ASI Sandeep for the next date of hearing.

PW Dr. Parveen who was directed to appear through VC today, did not send any intimation regarding the same. Let, bailable warrant in the sum of Rs.20,000/- with one surety in the like amount be issued against PW Dr. Parveen for the next date of hearing.

Adjourned to 01.07.2024 for evidence of prosecution.

CIS is not working from past two days, thus, fresh files are not being registered, case status is not being uploaded and interim orders are also not being uploaded.'

Further, the order dated 15.7.2024 passed by the learned trial Court reads as under:

The case is fixed for prosecution's evidence. One prosecution witness, namely, PW ASI Sandeep Kumar is present and examined as PW-4, another prosecution witness, namely, Dr. Parveen Dixit is examined as PW-5 through video conferencing. No other prosecution witness is present.

Learned Public Prosecutor vide his separately recorded statement has given up PW Dr. Manpreet and PW Dr. Mamta being unnecessary witnesses.



NBW issued against PW ASI Sandeep received back unexecuted. Let, fresh NBW be issued against PW ASI Sandeep for the next date of hearing.

To come up on 25.08.2024 for prosecution's evidence. PWs cited at serial Nos. 11 and 13 be summoned for the date fixed.

12. Keeping in view the entirety of the facts and circumstances of the case; Superintendent of Police, Nuh, is directed to remain present in Court alongwith his clarificatory affidavit on the next date of hearing.

13. Put up on 15.10.2024.

3. Affidavit of Vijay Pratap Singh, IPS, Superintendent of Police, Nuh, has been filed in Court today. The same be kept on record. Copy thereof has been furnished to learned counsel for the petitioner. The said Superintendent of Police is also present through video conferencing.

4. Having heard learned counsel for the parties and upon perusal of the record, this Court deems it appropriate to confirm the interim regular bail granted to the petitioner vide order dated 23.9.2024.

5. Ordered accordingly.

6. The petition stands allowed.

7. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

15.10.2024
Ashwani

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