



211-2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45532-2023
Date of decision : 27.11.2024

AsifPetitioner

versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Rahul Gautam, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Mr. Rakesh Nehra, Senior Advocate with
Mr. Reetesh Kumar, Advocate, Mr. Sauhard Singh, Advocate
Mr. Ankit Yadav, Advocate
for the complainant.

RAJESH BHARDWAJ, J. (Oral)

1. Present third petition has been filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 praying for grant of regular bail in case FIR No.68 dated 29.04.2018, under Sections 302, 346 and 120-B of IPC, registered at Police Station Rozka Meo, District Mewat at Nuh.
2. Succinctly, the facts of the case are that the FIR in the present case has been lodged on the statement of the first informant/complainant namely, Shakharoop Khan. It has been alleged by the complainant that his brother Samim Ahmad was married to Arseena in 2016. However, due to the misunderstanding between both of them, their married life ran into a rough weather. Resultantly, Arseena was living separately from his brother with her parents since November, 2016. During this period, Rukmeena



daughter of Kareem Khan came in contact with his brother Samim Ahmad. Both of them got married on 24.02.2018. As there was a threat to their life and liberty from Kareem Khan, Asif and Irshaad hence, they filed a petition for grant of protection before the High Court, Chandigarh against Karim Khan, Aasif and Irshaad. An FIR No.183 of 2018 was got registered by accused Sarjeet against Samim Ahmad and the family of the complainant. His brother Samim went missing on 21.04.2018. On 22.04.2018, his brother Tanveer had spoken to them and Samim informed that he was in Sohna for some work. He called Samim on his phone but he did not answer the call. At 01:57 AM, in the night, Rukmeena's brother Aasif called him and he answered the call. The person on the other end identified himself as Aasif from Pipaka. He told him to let him speak to Samim if he was in their custody. Aasif spoke to him in a frightened voice that he was in their custody and his life was in danger and thereafter, the call got disconnected. At 06:00 AM in the next morning, he tried calling him again and again but the phone was found to be switched off. On 23.03.2018, they went to Bahin Thana and provided all the information about the incident that had occurred in the previous night. On 25.04.2018, they filed a complaint to the police which was sent to Tavdu Thana for further action. On 28.04.2018 a news was published regarding an unidentified corpse having been found in Thana Rojka Mev jurisdiction along with photographs of the deceased. They identified the photographs to be of their brother Samim. They went to the police station and recognized the slippers and clothes etc of Samim. Since the dead body had already been cremated on 28.04.2018, by the local police before the complainant party reached there, bone was sent to FSL for DNA test.



Complainant suspected Aasif, Irshaad, Roshan, Munsharif son of Kareem Khan, Rukmeena, Ibrahim, Jamshed, Arif, Yaseen, Sarjeet and others having committed murder of his brother in conspiracy with each other. Request was made to register the case and take legal action against the culprits. FIR was registered for the offence under Sections 302, 346 and 120-B of IPC. On registration of the FIR, investigation commenced and the petitioner was arrested on 14.06.2018. Petitioner approached the Court of learned Additional Sessions Judge, Nuh five times by filing the application under Section 439 Cr.P.C. praying for grant of bail. However, finding no merit in the same, learned Additional Sessions Judge, Nuh, declined all applications including his 5th application praying for grant of bail on 25.05.2023. Being aggrieved, petitioner approached twice before this Court earlier praying for the grant of bail. However, the same were declined by this Court vide orders dated 28.02.2020 and 10.03.2022. Hence, petitioner is before this Court by way of filing the present third petition praying for the grant of bail.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. He has submitted that the case filed by the prosecution against the petitioner is totally based on circumstantial evidence and there is no credible evidence produced by the prosecution showing his complicity in the alleged offence. He has submitted that as per the case of the prosecution, the dead body of the alleged deceased had already been cremated before the complainant could reach the police station. He submits that identification of the dead body is based on recognition of the belongings of the deceased which is totally full of doubts. He thus,



submits that there is no plausible evidence in establishing the identification of the dead body. He submits that co-accused Kareem Khan, Munsharif have already been granted concession of regular bail by the learned trial Court. It has been vehemently contended by learned counsel for the petitioner that petitioner is behind bars since the date of his arrest and as on date, he has completed an incarceration of 06 years and 05 months. However, the prosecution has not been able to conclude the trial till date. It has been submitted that the speedy trial is the fundamental right of every accused and the same has been miserably defeated in the present case. It has been submitted that the material witnesses have already been examined and thus, there is no apprehension of tampering with the witnesses by the petitioner in case, he is granted the bail. He submits that in the overall facts and circumstances of the case, petitioner deserves to be granted bail.

4. Per contra, learned Senior counsel for the complainant has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that the petitioner has been specifically named in the FIR. He submits that the deceased had performed marriage with Rukmeena who is none other than the sister of the petitioner. He submits that this marriage was performed by his deceased brother against the wishes of the petitioner and his family members. He submits that an FIR No.183 of 2018 was also registered by the petitioner's side against the deceased and his family members. He thus, submits that the petitioner had a strong motive to eliminate his brother. It has been submitted by learned Senior Counsel that the petitioner had kidnapped his brother and he was made to call the complainant while he was in their illegal custody. It is



thus, submitted that there is ample evidence against the petitioner and hence, there being no merit in the petition, the same deserves to be dismissed.

5. Learned State counsel has also opposed the submissions made by counsel for the petitioner. He has drawn the attention of this Court to the status report dated 16.11.2024. He submits that the petitioner had a strong motive to murder the deceased who has married petitioner's sister against the wishes of petitioner as well as his other family members. He submits that as per the evidence collected, petitioner is the main accused. He submits that petitioner was arrested on 14.06.2018 and during interrogation, he suffered disclosure statement about the co-accused who had committed the murder of Shamim. He submits that out of 28 prosecution witnesses, 20 witnesses have already been examined. He has produced the custody certificate of the petitioner before the Court. He submits that the petition being devoid of any merits, deserves to be dismissed.

6. Heard. After hearing counsel for the parties and perusing the record, it is deciphered that the case of the prosecution is based on the circumstantial evidence. The deceased went missing from his home on 21.04.2018 and thereafter, the photographs of the dead body was published in the newspaper on 28.04.2018. The complainant identified the photograph published of the deceased and recognized the slippers and clothes etc. as belonging to the deceased. The body had already been cremated before they reached the police station. As per the custody certificate produced by the learned State counsel, petitioner has undergone an actual period of incarceration of 06 years 05 months and 09 days as on 26.11.2024. Custody certificate further reveals that petitioner is not



involved in any other case except the present case. Out of 28 prosecution witnesses, 20 witnesses have already been examined which would show that the material witnesses have already stand examined. Needless to say that the custody period of the petitioner as under trial prisoner is about 6½ years and the trial is not yet concluded. It has been observed time and again that the speedy trial is the right of every accused.

7. The Hon'ble Supreme Court in *Ashim @ Asim Kumar Haranath Bhattacharya @ Asim Harinath Bhattacharya @ Aseem Kumar Bhattacharya Vs. National Investigation Agency, 2022(1) SCC 695* has held as under:

“Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice.”

8. The Hon'ble Supreme Court in a recent decision dated 03.07.2024 in *Javed gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024*, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India.

9. The veracity of the allegations would be assessed only after conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. The trial of the case will take sufficiently long time. Thus, keeping in view the overall facts and



circumstances of the case, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

27.11.2024
m.sharma

(RAJESH BHARDWAJ)
JUDGE

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