

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

226

CRM-M-49993-2023

Date of decision: 22.02.2024

Sushil

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. S.S. Mor, Advocate
for the petitioner.

Mr. Rupinder Singh Jhand, Addl. A.G., Haryana.

Mr. Rajesh Khandelwal, Advocate
for the complainant.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.545 dated 31.07.2021 under Section 346 of the IPC (Sections 302, 201 and 120-B of the IPC added lateron) registered at Police Station Barwala, District Hisar.

2. Status report by way of affidavit of Gaurav Sharma, HPS, Deputy Superintendent of Police, Barwala, Hisar, on behalf of the respondent-State has been filed in the Court today which is taken on record subject to all just exceptions. A copy of the same has been supplied to the counsel opposite.

3. Learned counsel for the petitioner submits that the petitioner has been in custody since 01.12.2022 in a case resting entirely on circumstantial evidence; even as per the admitted case of the prosecution neither was there any witness of last seen nor was there any

extra judicial concession made by the petitioner qua his involvement in the murder of the deceased and most importantly there was no definite medical opinion on record with respect to the cause of death of the deceased, whose dead body was recovered from a canal. It has been, thus, asserted by the learned counsel that in a case resting on circumstantial evidence, motive which plays a prominent role, is not even clearly forthcoming because on the one hand as per the case of the prosecution, the deceased had been done to death by the petitioner on account of the latter's alleged relationship with the sister in law of the deceased, however, the sister in law of the deceased had been admittedly declared innocent during investigation. It has still further been submitted that the deceased went missing on 19.07.2021 in which regard a missing report was lodged by his wife on 31.07.2021. While lodging the missing report/FIR under Section 346 of the IPC no suspicion was raised by the wife of the deceased or by any member of his family qua the involvement of any person in his missing, much less the involvement of the petitioner; it was after a delay of one year and five months on 01.12.2022, the brother of the deceased namely Mandeep got his statement recorded under Section 161 of the Cr.P.C. wherein for the first time he alleged that his brother i.e. deceased Kuldeep Singh had been murdered on 19.07.2021 by his wife in connivance with her sister Kavita and two others and thereafter all the accused including the petitioner had thrown his body in the canal. Learned counsel has submitted that the abnormal delay in the statement recorded by Mandeep implicating the petitioner and the co-accused leaves no manner of doubt that for reasons totally incomprehensible

and rather best known to complainant Mandeep alone, he had come up with a totally fabricated version moreso, when earlier during investigation the sister of Anita had been declared innocent by the police; furthermore, there was no cogent evident or material collected by the police which could even remotely link the petitioner with the death of the deceased. Learned counsel has submitted that the petitioner has now been in custody since 01.12.2022 and the trial has not proceeded beyond the framing of charges as none of the 17 prosecution witnesses have been examined so far. Learned counsel submits that in the aforementioned facts and circumstances, further incarceration of the petitioner would serve no useful purpose as the trial would take considerable time to conclude. It has also been submitted by the learned counsel that the petitioner has clean antecedents as he is not involved in any other criminal case.

4. Per contra, learned State counsel assisted by learned counsel for the complainant, while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions, has submitted that all the accused including the petitioner had conspired to eliminate the deceased. The wife of the deceased had in pursuance of the same conspiracy lodged FIR under Section 346 of the IPC to mislead the police. However, learned State counsel has not disputed that it was after almost one and a half years that the brother of the deceased had for the first time levelled allegations against the petitioner and other co-accused qua their involvement in the murder in question. He has submitted that motive to commit the crime in question was the illicit relationship of the petitioner with the sister in law of the

deceased and his sister in law Kavita had also been made an accused in the murder in question, however, learned State counsel has not disputed that when the investigation was initially carried out after the deceased went missing, the sister in law Kavita was indeed found innocent by the police.

5. On a pointed query put to the learned State counsel qua findings of the FSL report, he, on instructions has submitted that though the sample had been deposited with the FSL, however, some objections had been raised by the FSL as a result of which the samples could not be deposited before the FSL and it was only as recently as on 10.02.2024 that after removal of the objections, the case property had been sent back to the FSL. It has also not been disputed by the learned State counsel that in the instant case other than the statement made by brother of the deceased on 01.12.2022, there was no witness of last seen in the case in hand. Learned State counsel has also not disputed the stage of trial.

6. I have heard learned counsel for the parties and perused the material placed on record.

7. Admittedly, the instant case rests on circumstantial evidence. Initially, FIR under Section 346 of the IPC was lodged at the instance of the wife of the deceased after he went missing; the brother of the deceased, who then subsequently lodged the FIR in question, or any other family members of the deceased never raised any suspicion much less by way of a whisper qua the involvement of the petitioner and the co-accused in the murder of the deceased. Motive which plays a prominent role in cases resting on circumstantial evidence was spelt out

only after one and a half years after the occurrence in question. Be that as it may, there is no likelihood of the trial concluding in the near future as none of the 17 prosecution witnesses have been examined till date. The next date fixed before the Trial Court is 28.03.2024 when the prosecution evidence is likely to commence, and that too as per instructions received by the learned State counsel, only in case the FSL report is received by then. In the facts and circumstances as enumerated hereinabove, this Court deems it fit to extend the concession of bail to the petitioner.

8. Accordingly, the instant petition is allowed. The petitioner be admitted to bail on his furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

22.02.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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