

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

287

CRM-M-57190-2023 (O&M)
Date of decision: 13.02.2024

Pawan Kohli ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Mohd. Yousaf, Advocate
for the petitioner.

Mr. Brijesh, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 12 dated 25.01.2023, registered under Section 304-B, 34 of IPC at Police Station Tibba, Police Commissionerate Ludhiana, District Ludhiana.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of the statement recorded by complainant Satyam Kumar on 25.01.2023 alleging therein that his younger sister Pooja was married with the petitioner in the year 2018. Two children were born of their wedlock. He alleged that the petitioner, his father and two brothers, namely Shiv Kohli and Subhash Kohli, used to harass her sister since marriage for bringing insufficient dowry. They used to extend beatings to her on account of demand of money. He further alleged that the victim used to be sent back to her parental house with the

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illegal demands raised by the petitioner and his family members and they always pacified their sister and sent her back to her matrimonial home and also tried to fulfill the demands as per their capacity. It was the further allegation that on 25.01.2023, the family members of the petitioner had extended beatings to her and had told her to bring an amount of Rs. 1,50,000/-. The victim, however, sent a message to the complainant for purchase of clothing. He stated that on the same day at about 12:15 PM, he had arranged gold loan from IIFL branch for an amount of Rs.1,55,000/- and handed over the same to the petitioner but on the same day at about 03:00 PM, on receipt of a message regarding the health of the victim being not well from her brother-in-law, he had asked his wife to immediately go to the matrimonial home of the victim, who had rushed there but none was found present in the matrimonial home of the victim.

3. It was further alleged by the complainant that on receipt of further information that the victim had been sent to CMC Hospital, Ludhiana, he rushed there and on reaching there, he found the dead body of the victim lying there. While alleging that his sister had died due to harassment meted out at the hands of his in-laws family, he prayed for taking action against them. After registration of the FIR, inquest proceedings and postmortem examination of the dead body of the victim was conducted. The petitioner and co-accused Shiv Kohli were arrested. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented in Court against them and presently, they are facing trial for commission of aforementioned offence. The petitioner had moved an

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application for grant of regular bail before the trial Court but the same was dismissed, vide order dated 25.10.2023.

4. The present petition has been filed by the petitioner on the grounds and his counsel has argued that he has been falsely implicated in this case. There had been no demand of dowry of any money from him or his family members against the victim. In fact, on filing of an application by his mother, enquiry was conducted by the police and the allegations that he had demanded money and the complainant had given an amount of Rs. 1,55,000/- to the petitioner by taking loan from IIFL branch were found to be false. However, since that enquiry report had been filed after presentation of the *challan*, therefore, the same could not be tagged with the *challan*. It is also submitted that in the suicide note, the victim has not levelled any allegations as against the petitioner. Rather, the contents of the suicide note reveals that she herself was very sensitive and could not bear the domestic discords. No case for commission of offence punishable under Section 304-B of IPC is made out. He is in custody since 26.01.2023. Trial is likely to take time. The co-accused Shiv Kohli has been granted the concession of regular bail by this Court, vide order dated 01.06.2023 passed in CRM-M-27114-2023. It is also submitted that it was a case of suicide by the petitioner and not a case of dowry death. With these broad submissions, it is urged that the present petition deserves to be allowed.

5. Status report has been filed by the respondent-State, as per which, the petitioner was arrested on 26.01.2023 and on conducting autopsy of the deceased, the cause of death was found to be hanging, which was ante-mortem in nature. It has also been submitted that the petitioner along

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with his brother Shiv Kohli was apprehended on 26.01.2023. In paragraph No. 4 of the status report, the respondent-State has admitted that the mother of the petitioner had filed an application and the same was enquired into. It is submitted that during the enquiry, it surfaced that the allegations as levelled by the complainant regarding handing over an amount of Rs. 1,55,000/- to the petitioner on 25.01.2023 after availing a gold loan were inaccurate. In fact, on that day, the complainant had visited the office of the petitioner to secure a gold loan and the petitioner had given his own gold for pledging resulting in the complainant's receiving a loan of Rs. 1,57,200/-. It is also submitted that it was on account of the dispute/continuous conflict between the petitioner and victim that she had committed suicide.

6. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

7. As per the allegations, the victim, who was married with the petitioner in the year 2018, was subjected to cruelty on account of demand of dowry and she had committed suicide as on 25.01.2023 due to the harassment so given. However, it has also come on record that the victim had died a suicidal death and had left a suicide note. The contents of the suicide note are reproduced as below for the sake of further reference:

**“Sab meri galti hai
Kyuki muje bardash nhi hota.
I am sorry, Maa
Papa
I love you Chiku
Mera Agam meri behan rani Didi k pass rahega or
Gauya Meri Ma ke pass rahegi
Bye”**

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8. On a bare perusal of the contents of this suicide note, it is clear that the victim had not levelled any allegations as against the present petitioner or any other member of her in-laws family and had stated that she was committing suicide as she could not bear something. This note gives an indication that the possibility that the victim who had committed suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide cannot be ruled out. So far as the suicide note is concerned, whether the same can be considered as a valid dying declaration under Section 32(1) of the Evidence Act has been considered by Hon'ble Supreme Court in several authoritative pronouncements cited as *Sharad Birdhi Chand Sarda vs. State of Maharashtra : (1984) 4 SCC 116*, *Pakala Narayana Swamy vs. Emperor : AIR 1939 PC 47* and *Hanumant V State of M.P, AIR 1952 SC 343*, as per which, suicide note is admissible as dying declaration under the ambit of Section 32(1) of the Evidence Act. However, to seek corroboration of a dying declaration is a rule of prudence and that question can be decided by the trial on the basis of evidence to be produced on record.

9. The respondent-State in the status report has itself mentioned that the allegations as made by the complainant that he had secured a gold loan of Rs.1,55,000/- on 25.01.2023 for fulfilling the demand of money as made by the petitioner/his family members were found to be false but this fact had come on record after conducting enquiry and after filing challan report as against the petitioner. On the basis of the submissions as made in the status

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report and keeping in view of the allegations in the FIR, it *prima facie* does not appear to be a case of dowry death because though the victim was married from the last five years but there were no specific allegations as to what particular demands have been raised by the petitioner and his family members prior to 25.01.2023. The petitioner is in custody for over a period one year. It has come on record that though challan has been presented but charges against him have not been framed so far. Therefore, naturally, the trial is likely to take. At this stage, there is nothing to suggest that it was the petitioner who had abetted the suicide of the victim or it was due to harassment given by him to the victim on account of demand of dowry that she committed suicide. As such, in my considered opinion, the present petitioner deserves to be given benefit of regular bail.

10. Accordingly, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

11. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

13.02.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>