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2025.PHHC.007274



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-64579-2024
DECIDED ON: 14.01.2025

KALU BISHWAKARMA
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr.Arpan Sabharwal, Advocate for
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab

SANDEEP MOUDGIL, J (ORAL)

Relief Sought

1. The jurisdiction of this Court has been invoked under Section 483 BNSS, 2023 for grant of Regular Bail to the petitioner in case FIR No. 37 dated 19.03.2024 under Sections 307, 328, 34 IPC, registered at Police Station Division No.5, Ludhiana, Punjab(Annexure P-1).

Facts

2. That as per the allegations, the present FIR (ANNEXURE P-1) was registered on the statement of Complainant Nitesh Jindal in which he has stated that on 18.03.2024, he along with his wife and children went to Chandigarh to attend a function. His parents and servants namely Karan Bahadur and Kalu Bishwakarma were present in the house. At about 9:40 PM he received a telephonic call from his father that he is feeling dizzy. Thereafter, he contacted his

neighbour Ketan Arora and asked him to visit his house and also asked his friend to visit the house. When the friend of the Complainant reached the house of the Complainant, he told the Complainant that his mother was lying unconscious and his father was also in a state of unconsciousness. Thereafter the parents of the Complainant were got admitted in Arora Hospital. Thereafter his friend Ketan conducted personal search of the servants of the Complainant and from the pocket of Kalu Bishwakarma, (Petitioner) a pink colored powder was recovered. On asking, the Petitioner told that it was a medicine for his teeth and when he was asked to eat it in front of everyone he swallowed the same and after some time he also became intoxicated. Thereafter on asking, the other servant Karan Bahadur Bogti told that they had given drug powder to the owners of the house due to which they had become unconscious After checking the CCTV camera footage of the house it came out that at about 05:30 PM, their servants Kalu and Karan were approached by an unknown boy who handed them something in an envelope and the servants of the Complainant had committed the incident with the intention of killing parents of the Complainant.

Submissions

On behalf of the Petitioner

3. Counsel for the petitioner contends that the petitioner has been falsely implicated in this case wherein no incriminating material has been recovered from the possession of the petitioner who was only working as a helper in the house of the complainant. He further argues that the petitioner has been made a scape goat as it was the co-accused who being the cook of the complainant had administered the alleged powder in the food of the parents of the complainant and thereafter ran from the spot. Counsel for the petitioner submits that the

petitioner is in custody since 19.03.2024 and is languishing in jail from the past nine months for no fault of his and prays for grants of concession of regular bail.

On behalf of the State.

4. Learned state counsel has produced the custody certificate which is taken on record. According to the custody certificate, the petitioner is behind the bars for the past 9 months and 19 days. He prays for dismissal of the bail by submitting that the petitioner along with co-accused namely Karan Bahadur Bogti whose bail stands dismissed vide order dated 09.01.2025 in CRM-M-57940-2024, had given poisonous substance to the parents of the complainant with the intention to kill them. Thus, the petitioner is not entitled to be released on regular bail.

5. Heard learned counsel for the respective parties at length.

Analysis

6. Before delving into the merits of the case, it would be apposite to discuss section 328 IPC which is reproduced herein below:-

Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

7. A perusal of abovesaid Section would show that the following ingredients must be satisfied to constitute an offence under section 328 IPC as under:

(i) Some person or persons should administer or cause to be taken by any person any poison or stupefying, intoxicating or unwholesome drug, or other thing; and

(ii) The intention of the person or persons mentioned in (i) should be to cause hurt to the person concerned, or should be within knowledge on the part of the person or persons that the result of his act or their act was likely to cause hurt to the concerned persons.

8. The above said ingredients should exist conjunctively, then and then alone would the offence be complete and the person or persons, as the case may be, would be guilty of the offence contained in [Section 328](#) IPC.

9. As has been culled out from the facts of the present case, the petitioner along with the co-accused is alleged to have administered poisonous substance in the food of the parents of the complainant with an intention to kill them. During the course of arguments, the state counsel has produced a report of the FSL which is taken on record, the perusal of which reveals that the parents of the complainant were administered a drug named 'Lorazepam'.

10. Moreover, in "[Ram Govind Upadhyay v. Sudarshan Singh, of \(2002\) 3 SCC 598](#)", it has been clearly laid down that the grant of bail though involves the exercise of the discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature of crimes warrants more caution as there is a greater chance of rejection of bail though, however, dependent on the factual matrix of the matter. In the said case, reference was made to "[Prahlad Singh Bhati v. NCT of Delhi, \(2001\) 4 SCC 280](#)," and thereafter the court proceeded to state the following principles:-

"(a) While granting bail the court has to keep in mind not only the nature of the accusations but the severity of the punishment if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

- (c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.
- (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered .

in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

Conclusion

11. Be that as it may, taking into consideration the facts of the present case along with the FSL report and the fact that the bail of co-accused has been dismissed vide order dated 09.01.2025 in CRM-M-57940-2024, this court finds no reason to grant the concession of the regular bail to the petitioner.
12. Hence, looking into the facts of the present case and the gravity of the offence , the petition stands dismissed.
13. However, it is made clear that the observations made herein above shall have no bearing in the mind of the trial court while adjudicating the matter in accordance with law.

(SANDEEP MOUDGIL)
JUDGE

14.01.2025
Meenu

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