

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

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**CRM-M No. 29044 of 2021
Date of decision : 28.4.2022**

Ajay

.....**Petitioner**

Vs.

State of Haryana

.....**Respondent**

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present : Mr. Jitender Dhanda, Advocate, for the petitioner
Mr. Neeraj Poswal, AAG, Haryana

RAJESH BHARDWAJ, J. (Oral)

Instant petition has been filed under Section 439 Cr.P.C. praying for grant of regular bail to the petitioner in case FIR No.108, dated 18.2.2021, under Sections 323, 328 and 34 IPC (Sections 323 and 34 IPC stand deleted during investigation and Section 306 IPC was added), registered at Police Station Hisar Sadar.

As per the factual matrix of the case, the present FIR was lodged on the statement of Anju (deceased) daughter of Prem Singh. It was recorded by the Investigating Officer. It was deposed by the deceased/complainant that her marriage was solemnized on 2.7.1995 with Rajinder. They were blessed with two kids from this marriage. Thereafter, differences took place between the husband and wife and she took divorce from the Court of competent jurisdiction in 2013-2014. Thereafter, she came in contact with Ajay i.e. the petitioner and they had physical relationship as well. From the last 10 years, she was in relationship with Ajay, though there was no documentation regarding their relationship. As she could not talk to Ajay from the last 8-9 days so she went to Behbalpur on 16.2.2021 to meet him. She found Ajay and

his mother at home. Ajay's mother was not happy with her presence and she started abusing and beating the complainant. She called Ajay and thereafter, both gave beatings to her. It was further deposed that Ajay and her mother mixed something in water and made her drink. Thereafter, Ajay left the home and she followed her. Ajay boarded a bus to Hisar and she also boarded the bus. Thereafter, she started feeling uneasy and started vomiting. Ajay asked her to sit inside the bus stand. However, she became unconscious. The passengers sprinkled water on her face and she regained consciousness. She was admitted in the hospital. On the basis of the deposition of deceased, FIR was lodged. As subsequent, on the very next day in the hospital, the complainant died. The investigation commenced and during investigation, the offence under Section 302 IPC was deleted. Hence, the petitioner is being prosecuted for the offences under Sections 306, 323, 328 and 34 IPC. The petitioner was arrested on 24.2.2021. He approached the Court of Additional Sessions Judge, Hisar for grant of bail. After hearing the parties, learned Additional Sessions Judge, Hisar declined the bail vide order dated 6.5.2021.

Learned counsel for the petitioner has submitted that the present case is nothing but an abuse of the process of the Court. He submits that both the petitioner and the deceased were of the age of majority. The deceased was married and thereafter divorced. She was mother of two children. He submits that as per the allegations in the FIR, it is admitted fact that the petitioner and the deceased were in consensual relationship. There was no coercion of any nature, whatsoever, from the side of petitioner with the deceased. He has contended that there was a compromise between the petitioner and the deceased before the panchayat, where they agreed to not to have any

relationship thereafter. From the facts and circumstances, no case under Section 306 read with Section 107 IPC is made out as the petitioner cannot be said to have instigated the deceased to commit suicide. He further contended that as per the FSL report, on conducting post-mortem, aluminium phosphide was detected. He has submitted that the poison detected has pungent smell and the same can never be administered forcefully. He submits that the petitioner has never been involved in any other criminal case. He has submitted that the investigation in this case is already complete and after framing of the charges, evidence is being recorded by the trial Court. Thus, the petitioner deserves to be granted bail.

Learned State counsel has opposed the submissions of the counsel for the petitioner and submits that the statement made by the deceased before her death is nothing but a dying declaration. He submits that there are specific allegations against the petitioner and his mother having mixed something in water, which was administered to the deceased. He submits that brother of the deceased had appeared before the trial Court and filed application under Section 319 Cr.P.C. for summoning the mother of the petitioner as well.

Heard.

At the initial stage, the FIR lodged under Section 302, 323, 328 and 34 IPC and at present the petitioner is being prosecuted only for the offence under Section 306 IPC. As per the FSL report, the aluminium phosphide was detected in the post mortem. The relationship between the petitioner and the deceased, prima facie, appears to be consensual. Both were of the age of majority. The investigation in the case already stands completed. Charges are framed and the learned trial Court is now seized of the matter for

recording the evidence. There is nothing on record showing the petitioner having been involved earlier in any of the criminal case. The veracity of these allegations would be evaluated by the trial Court only after the conclusion of the trial. However, this Court would refrain itself from commenting on the merits of the case. In the overall facts and circumstances of the case, this Court finds that learned counsel for the petitioner succeeds in making out the case for grant of regular bail to the petitioner. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate.

(RAJESH BHARDWAJ)
JUDGE

28.4.2022

Ashwani

Speaking/Reasoned : Yes/No
Reportable : Yes/No

सत्यमेव जयते