

Law Today Live Doc. Id. 15537

PUNJAB AND HARYANA HIGH COURT**Before: Anil Kshetarpal, J.**

CRM-M-22842-2020(O&M)

Decided on: 27.10.2020

Des Raj @ Desi

Petitioner

Versus

State of Punjab

Respondent

Present:

Mr. Ranbir Singh Sekhon, Advocate, for the petitioner.

Ms. Samina Dhir, DAG, Punjab

Code of Criminal Procedure, 1973 (2 of 1974), Section 439 -- Indian Penal Code, 1860 (45 of 1860), Section 304 – Regular bail – Parity with co-accused -- Another co-accused was granted bail – State has failed to draw the attention of the Court to any distinguishing features except that the petitioner is involved in 7 more cases, out of which 3 are under NDPS Act, 1985 – Held, present case is required to be decided on the basis of the evidence produced by the prosecution -- A coordinate Bench has already considered the aforesaid facts, while granting the concession of bail -- Petitioner also ordered to be released on regular bail.

(Para 6-8)

ANIL KSHETARPAL, J. (ORAL) –

1. Hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

2. This is second petition for grant of bail to the petitioner pending trial in a criminal case arising from FIR No.246, dated 03.11.2018, registered under Section 304 IPC, at Police Station Sadar Ferozepur, District Ferozepur.

3. The first bail application filed by the petitioner was disposed of with a direction that the petitioner shall be at liberty to file a fresh petition, once the investigation in the case is complete.

4. It is not in dispute that the investigation is complete. The petitioner is in detention for a period more than 1 year and 10 months. As per the case of the prosecution, Harmesh Singh @ Mesha, died due to over dose of prohibited substance i.e. 'Heroin.' A coordinate Bench while examining the prayer for grant of bail to a co-accused Resham @ Chitti, on 31.07.2020, in CRM-M-12616-2020, has passed the following order:-

"The instant petition has been filed under Section 439 of the Code of Criminal Procedure seeking regular bail in case FIR No.246 dated 03.11.2018, under Section 304 of the I.P.C., registered at Police Station Sadar Ferozepur, District Ferozepur.

2. In compliance of the last order dated 28.07.2020, Ld. State Counsel has drawn attention of the Court to the statements of two material witnesses recorded by the Investigating Officer under Section 161 of the Cr.P.C. The first one happens to be the statement given by

Sarpanch, namely Mangal Singh, of the concerned area on 03.11.2019, according to whom, the petitioner, along with his accomplices, had made an Extra Judicial Confession to the effect that they had been selling drugs to the deceased regularly, and that on the relevant date, the deceased had purchased a large quantity of drugs, worth Rs.600/-. Thereafter, the deceased is stated to have consumed the over dosage of drugs, which led to his death subsequently. The other statement happens to be that of witness Sukhwinder Singh, who, like the deceased, claims to be a drug addict himself and had similarly stated that the deceased had died on account of taking over dosage of whatever drug he had illegally purchased from the petitioner and his accomplices.

3. *The petitioner was arrested more than one year ago, on 16.06.2019. Thereafter, challan against him has been submitted under Section 304 of the I.P.C.*

4. *Without commenting on the merits of the case, it may be remarked at this stage that the available incriminating material transpiring from the statements of the concerned witnesses might indicate liability of the petitioner for any offence pertaining to dealing with illegal drugs or psychotropic substances, but none of the statements make any mention of the fact that the petitioner in any manner consciously forced or induced the victim to consume an over-dosage of the drugs, which would have been a sine qua non to constitute the ingredients of the offence under Section 304 of the I.P.C. for causing death of the victim by any act in the ordinary course of nature, for which offence alone, the challan against the petitioner has been filed. The fact of the matter would remain that the over-dosage was apparently taken by the victim himself voluntarily.*

5. *Taking the aforesaid factors into account, along with the situation that so far only 4 prosecution witnesses, out of the total 15 prosecution witnesses, have been examined and the trial has become largely stalled on account of the ongoing COVID-19 Pandemic and would take its own time to conclude, as also considering the long detention undergone by the petitioner, he is ordered to be released on regular bail, subject to the appropriate terms and conditions to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.*

6. *Disposed off."*

5. Another co-accused Manpreet Singh @ Monty, has been granted the concession of bail vide order dated 01.09.2020, passed in CRMM-9497-2020.

6. Learned counsel for the State has failed to draw the attention of the Court to any distinguishing features except that the petitioner is alleged to be involved in 7 more cases, out of which 3 are under the Narcotic Drugs and Psychotropic Substances Act, 1985.

7. This court has considered the submissions.

8. The present case is required to be decided on the basis of the evidence produced by the prosecution. A coordinate Bench has already considered the aforesaid facts, while granting the concession of bail. For the reasons stated in the order dated 31.07.2020, the petitioner is also directed to be released on regular bail subject to his furnishing of adequate surety to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned.

9. Accordingly, the present petition is allowed with the aforesaid directions.

Petition allowed.



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