

**HIGH COURT OF PUNJAB AND HARYANA  
BENCH : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL  
Date of Decision: 25th April 2024**

CRM-M No. 8549 of 2024 (O&M)

**MANISH ... Petitioner**

**VERSUS**

**STATE OF HARYANA ... Respondent**

**Legislation:**

Section 439 of the Code of Criminal Procedure (Cr.P.C.)

Sections 147, 148, 149, 302, 34 of the Indian Penal Code (IPC)

**Subject:** Application for bail in a murder case involving circumstantial evidence and alleged false implication of the petitioner.

**Headnotes:**

Criminal Law - Bail Application - Petitioner seeks bail under Section 439 Cr.P.C. for FIR No. 417 registered under IPC Sections 302 and 34 after deletion of IPC Sections 147, 148, 149 - Petitioner implicated based on a confessional statement and not named initially in the FIR - Key witnesses, including the complainant and deceased's son, turned hostile and did not support the prosecution's case - Circumstantial evidence with no motive demonstrated against petitioner - Bail granted considering the petitioner's clean antecedents, absence of criminal history, and the improbability of influencing remaining witnesses - Hostility of key witnesses and absence of direct evidence highlighted - Court emphasizes that observations are not an opinion on the merits of the case. Bail Allowed. [Paras 1-5]

Referred Cases: None mentioned.

Representing Advocates:

For the petitioner: Mr. Shivam Kamboj Sirsa

For the respondent/State: Mr. Rajesh Gaur, Addl. Advocate General, Haryana

**MANJARI NEHRU KAUL, J. (ORAL)**

CRM No.17762 of 2024

In view of the averments made in the application and in the interest of justice, the same is allowed as prayed for. Statements of PW- 4 and PW-6 (Annexures P-6 and P-7) are taken on record.

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1. The petitioner is seeking the concession of bail under Section 439 Cr.P.C. in case FIR No.417 dated 30.04.2022 under Sections 147, 148, 149, 302 of the IPC (Section 34 IPC added and Sections 147, 148, 149 IPC deleted later on) registered at Police Station HTM Hisar, District Hisar.

2. Learned counsel for the petitioner inter alia contends that the case in hand rests on circumstantial evidence; as per the initial version put forth by the complainant Sanjeev Kumar (brother of the deceased), his brother had been assaulted to death by accused Deepak who was allegedly in an illicit relationship with the wife of the deceased namely Sunita; allegedly the crime in question was carried out with the connivance of Sunita (wife of the deceased) and two other persons. Learned counsel submits that since it is a case resting on circumstantial evidence, no suspicion much less by way of a whisper had been raised qua the involvement or participation of the petitioner in the alleged murder; furthermore, the petitioner was neither connected with the co-accused Deepak in any manner so as to have connived with him to carry out the crime in question; later the petitioner was implicated as an accused on the basis of an alleged confessional statement made by him after he was rounded up on suspicion following his name cropping up during investigation; the petitioner allegedly confessed to have stabbed the deceased on his knees with a knife along with other co-accused. Learned counsel has submitted that a totally loose knit version had been fabricated by the prosecution to solve the murder of the deceased, who was drunkard, which had evidently been carried out by some unidentified persons. It has also been vehemently contended that the alleged confession by the petitioner before the police was inadmissible in evidence. Learned counsel has also drawn the attention of this Court to the deposition of the two material witnesses PW-4 Vikas (son of the deceased) and complainant – PW-6

Sanjeev (brother of the deceased), who had been declared hostile during trial though only against co-accused Sunita. Learned counsel submits that since the motive projected for the accused to commit the crime in question was the alleged illicit relationship between co-accused Sunita and Deepak, once the genesis of the occurrence stood demolished by the prosecution witnesses themselves, nothing would survive against the remaining accused, particularly, in the case of the petitioner as he had been arraigned as an accused only on the basis of inadmissible evidence i.e. his confessional statement. Learned counsel has further submitted that the petitioner has been in custody since 04.05.2022; there is no possibility of the trial concluding in the near future as 11 prosecution witnesses still remain to be examined; all the key witnesses including the complainant as well as son of the deceased already stand examined and, as already submitted, did not support the case of the prosecution, hence, his further incarceration would serve no useful purpose.

3. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions, has not disputed that neither was the petitioner named in the FIR in question nor was any suspicion raised qua his involvement in the murder of the deceased. He, on further instructions, has also not disputed that both the key witnesses stand examined and had been declared hostile. It has also not been disputed that the petitioner made confession before the police which led to he being arraigned as an accused in the case in hand.

4. I have heard learned counsel for the parties and perused the relevant material on record.

5. As not disputed, both the key witnesses stand examined including the complainant, who also spelt out the motive to commit the crime in question and were declared hostile during trial. The petitioner has been in custody

since 04.05.2022; 11 prosecution witnesses still remain to be examined. As not disputed by the learned State counsel, the petitioner has clean antecedents and is not involved in any other criminal case, hence, his further incarceration would serve no useful purpose as there can be no apprehension of the petitioner intimidating/influencing the remaining witnesses. Furthermore, it is a case resting on circumstantial evidence and no motive has been spelt out against the petitioner to commit the crime in question. In the facts and circumstances, as enumerated hereinabove, this Court thus deems it fit to extend the concession of bail to the petitioner. The petition as such is allowed and the petitioner is admitted to bail to the satisfaction of the trial Court/Duty Magistrate. 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.

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