



CRM-M No.20042 of 2024 (O&M)

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

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CRM-M No.20042 of 2024 (O&M)

Reserved on: 31.07.2024

Pronounced on: 09.08.2024

Faheem @ Faim @ Mohammad Faheem

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Vinod Ghai, Sr. Advocate
with Mr. Arnav Ghai, Advocate
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR J. (Oral)

1. In compliance of order dated 30.04.2024 passed by this Court, short reply by way of affidavit of Vipin Kumar Ahlawat, Assistant Commissioner of Police, Manesar, Gurugram along with custody certificate dated 29.07.2024, has been filed in the Court today on behalf of respondent-State, which are taken on record. Copy supplied to the counsel opposite in the Court.

2. Prayer in this 3rd petition filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in FIR No.296 dated 28.09.2022, registered under Sections 304(ii), 201 read with Section 34 of IPC and Section 34 of The National Medical Commission Act, 2019, at Police Station Industrial Sector-7, Manesar, District Gurugram.



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3. As per prosecution case, the allegations levelled in the FIR are that the complainant Ram Avatar has got his complaint recorded to the effect that his nephew Leeladhar was working in Maruti company in IMT, Manesar and was residing as Paying Guest with his colleague. On 27.09.2022, he received an information that his nephew Leeladhar had died. Since Leeladhar had died in suspicious circumstances, he made request to the police for getting conducted the post-mortem and after the post-mortem he saw CCTV footage at the paying guest facility which revealed that his nephew had fever and he was getting himself treated from Dr. Faheem of Alam Clinic in village Aliyar. On 26.09.2022 also his nephew had gone to Dr. Faheem. He alleged that his nephew Leeladhar had died due to wrong treatment given by Dr. Faheem and after the death of Leeladhar, Dr. Faheem alongwith his friend Shubham had kept the dead body of Leeladhar on the road near the paying guest facility. It was also alleged that Dr. Faheem does not have any professional degree. On these allegations, the present FIR was registered.

4. Learned Senior counsel for the petitioner *inter alia* contends that the petitioner is innocent and has been falsely implicated in the present case. He submits that the petitioner had just administered a Monosef Injection 500 mg to the deceased, which is an anti-biotic. He submits that deceased Leeladhar had died a natural death as per the post-mortem report dated 28.09.2022. He further submits that the cause of death in this case is 'Asphyxia i.e. due to blockage of respiratory



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passages' and Asphyxia is a mode of death i.e. when a person stops breathing. He further submits that as per the FSL report dated 29.03.2023, no common poison/ethyl alcohol has been detected in the body of deceased. He submits that the deceased seems to have died on account of food particles/vomit particles, which struck in his throat/veins, which would result in destructing the breathing passage of his body and he succumbed to death and no injury whatsoever has been found on the body of deceased.

5. Learned Senior counsel for the petitioner further submits that there is neither intention (*mens rea*) nor 'knowledge' on the part of the petitioner that his act would result or likely to cause death of the patient. He further submits that even if the allegations are taken as it is, still no offence under Section 304(ii) IPC is made out against the petitioner as guilty mind and overt act on the part of the accused should be there to constitute the offence under Section 304(ii) IPC, however in the present case, there is no material on record to suggest that the petitioner had guilty intuition to commit the alleged offence, therefore, no motive is attributed to him, which is an essential ingredient of Section 304(ii) IPC. He further submits that disclosure statement of the petitioner is not admissible in law as the same hold significance as a contributing factor in unriddling a case, they are not so strong piece of evidence.

6. Learned Senior counsel for the petitioner also submits that the petitioner is in custody for the last 01 year 09 months and 29 days.



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He further submits that the material witnesses i.e. PW-2 Ram Avtar and PW-3 Purshottam, have not supported the case of the prosecution and have already been declared hostile. He further submits that the petitioner is not involved in any other case; investigation in the present case is complete as challan stands presented; charges have been framed and out of total 23 prosecution witnesses, only 06 PWs have been examined so far and the next date fixed before the Sessions Court is 07.08.2024 and the trial is likely to take considerable time to conclude and, therefore, no fruitful purpose would be served by detaining the petitioner behind the bars.

7. Per contra, learned State counsel has opposed the prayer for grant of regular bail to the petitioner on the ground that the petitioner was practising as a Doctor without holding any professional degree, as required by law and he had administered an injection to the deceased after which he succumbed to death. He further submits that the petitioner along with the co-accused Subhan son of Asif had thrown the dead body of deceased on the road in front of the shop, in order to destroy the evidence, therefore, he does not deserve the concession of regular bail.

8. I have heard learned Senior counsel for the petitioner and State counsel and given my thoughtful consideration to the case in hand.

9. As per prosecution case, Leeladhar-deceased was suffering from fever and had visited the clinic of the petitioner for his treatment



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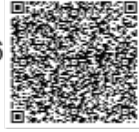
where he had been injected Monocef injuction 500 mg by the petitioner and later on he succumbed to death. After investigation by the police, an FIR was registered against him under sections 304 Part-II, 201, 34 IPC (offence punishable under section 34 of National Medical Commission Act, 2019 was added later on). As per post mortem report, the cause of death of deceased Leeladhar has been found as Asphyxia-due to blockage of respiratory passages. No common poison/ethyl alcohol has been detected in the body of deceased. This Court is not in a position to say anything at this stage as the Court lacks the necessary medical or technical expertise to interpret medical evidence, procedures or treatments. The role of the petitioner will be evaluated on the basis of scientific/medicinal evidence brought up by the prosecution agency during the trial of the case. As of now, it has come in the investigation that the petitioner, who is only accused in present FIR against whom charge-sheet has been filed, was practicing as a Doctor in his clinic without possessing any professional degree as required under the law and in order to destroy the evidence had thrown the dead body of deceased on the road near the Paying Guest due to the reason that the petitioner is a quack. It is to be seen by the trial court as to whether the petitioner was a registered medical practitioner or not and running his clinic or not, by way of evidence to be adduced before the trial Court. Concededly, a person has lost his life. Unregistered medical practitioners pose a significant threat to public health in India. Despite the existence of laws and regulations, many individuals



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practice medicine without proper qualifications or registration, putting patient's lives at risk and consequence thereof, misdiagnosis and improper treatment leading to worsening of patient conditions. They are a menace to public health in India. A person who committed offence under section 304 Part-II IPC, is liable to be awarded imprisonment for upto ten years and the period of custody undergone by the petitioner is only 1 year 9 months and 29 days as of now. No doubt, prosecution witnesses namely Puroshottom and Ram Avtar have not supported the case of the prosecution but at the same time, this fact cannot be lost sight of that scientific/medicinal evidence is yet to be adduced by the investigation agency to substantiate its case for knowing the truth/cause of death, before the trial Court. Trial is at the stage of prosecution evidence and out of 23 prosecution witnesses, 06 witnesses have been examined.

10. In wake of the above, this Court is not inclined to invoke its jurisdiction under section 439 Cr.P.C. for grant of regular bail and the same is, accordingly, dismissed, at this stage.

(NAMIT KUMAR)
JUDGE

09.08.2024*yakub*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No