

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

**Criminal Misc. No. M-1444 of 2015
Date of decision : 02.02.2015.**

Parveen and another

..Petitioners

Versus

State of Haryana and another

..Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. R.S. Cheema, Sr. Advocate with
Mr. J.S. Mehndiratta, Advocate
for the petitioners.

Mr. Munish Sharma, A.A.G., Haryana
for respondent No.1 – State.

Mr. P.S. Ahluwalia, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to petitioners in Criminal Complaint No.59/1 of 2010 dated 20.02.2010 under Sections 302 and 120-B of Indian Penal Code during the pendency of the complaint.

Learned senior counsel for the petitioners submits that the petitioners have falsely been implicated in the case whereas they

were not involved in any manner as has also been affirmed by the detailed investigation conducted by the Police. During the course of investigation, the petitioners were subjected to lie detector/polygraph test wherein it was found that they were not party to any conspiracy to kill deceased-Sangeeta. Learned senior counsel further submits that on the basis of thorough investigation conducted by the Police, cancellation report was prepared on 30.01.2008 and the same was presented before the Court of competent jurisdiction but as the complainant was not satisfied with the investigation carried out by the Police and he filed a protest petition. The petitioners have been summoned in protest petition. Learned senior counsel also submits that the petitioners are ready to join the Court proceedings and to abide by all the terms and conditions to be imposed by this Court or by the trial Court and nothing is to be recovered from them. They have been summoned after long delay. It is also the argument of learned counsel for the petitioners that as per medical opinion, the cause of death has not been established to be homicidal in nature. In the post mortem examination conducted upon the dead body of the deceased-Sangeeta, no external injury was found. As per opinion of doctor, the death was caused due to suffocation induced by pressure on the chest resulting into fracture of second rib, rupture of left pleura and lung, which was the outcome of fall suffered by deceased-Sangeeta. Learned counsel further submits that as per the opinion of the doctors of PGIMS, Rohtak, the said fracture was responsible for causing the

death and the fracture of a single rib and the associated injuries were least likely to be caused as a result of fall. Learned senior counsel submits that the petitioners have been summoned only on the basis of opinion of the doctors whereas the death was result of fall in the kitchen. Said opinion was formed by the doctors on the basis of documents, which were supplied to them. No motive whatsoever has been proved against the petitioners. The petitioners have been summoned without taking into consideration the cancellation report filed by the Police. Learned counsel for the petitioners has also relied upon judgments of Hon'ble the Apex Court in **Maninder Kaur & ors. vs. Teja Singh, All India Criminal Law Reporter 2000(4) 768, Anita @ Pinki & Anr. vs. Krishan Lal Mehta & Anr., S.L.P. (Crl.) No.147 (2002)** as well as judgment of this Court in **Chet Singh & Ors. vs. The State of Punjab, The Criminal Law Times Vol. (5) 1978 (140)** in support of his contentions.

Learned counsel for respondent No.2 submits that it is not only a case of unnatural death but the Police was reluctant in registering the FIR as the FIR was registered only after the intervention of higher Police authorities. The death occurred in the house of the petitioners and as per provisions of Section 106 of Evidence Act, the burden to prove is upon the accused persons. Learned counsel for respondent No.2 further submits that it has specifically been mentioned in the complaint that the petitioners were party to conspiracy. PW2 Dr. Sushil Kumar and PW3 Dr. Sarita Gulati

in their statements deposed regarding post mortem report conducted by them and stated that the death was caused due to asphyxia. PW2 Dr. Sushil Kumar has even remarked that death was caused due to suffocation induced by pressure on the chest resulting into fracture of second rib, rupture of left pleura and lung. As per PMR, no external injury was present on the person of deceased. Learned counsel for respondent No.2 also submits that in such a situation when a person falls in the kitchen but does not suffer a single injury, appears to be unbelievable. Learned counsel for respondent No.2 has also relied upon order passed under similar circumstances in **Criminal Misc. No. M-31735 of 2012 on 09.10.2012** wherein it has been held that in case of unnatural death, anticipatory bail cannot be granted simply by stating that it is a complaint case. Similarly, the present case is not only the case of unnatural death but also the one where death has occurred under mysterious circumstances.

Heard arguments of learned counsel for the petitioners as well as learned counsel for respondent No.2 and have also perused the case file.

Admittedly, it is a case of unnatural death, which has occurred in the house of the petitioners. On the basis of complaint made on the next day of the incident, DDR No.7 was lodged on 08.03.2006 but no FIR was registered whereas cognizable offence was made out. The FIR was registered on 18.03.2006 after passing of order by ADGP, Haryana. As per investigation conducted by the

Police, the petitioners were found innocent and cancellation report was filed before the Court, which was not to the satisfaction of the complainant. The petitioners have been summoned in the protest petition filed by the complainant. It is also not disputed that cancellation report filed by the Police was not accepted and the same was set-aside. The petitioners have been summoned on perusal of statements of witnesses, after considering the opinion given by the doctors in the post mortem as well as in Chemical Examiner's report. As per medical evidence on record the cause of death was due to suffocation caused by pressure on the chest, which resulted into fracture of left second rib; rupture of left pleura and left lung. Not only the opinion of the doctors is there but serious allegations are also there in the complaint, supported by the statements of the witnesses examined by the summoning Court. The deceased at the time of occurrence was in the house of the petitioners and death has occurred in their house.

For granting anticipatory bail, the nature of offence is to be seen and this power is to be exercised only when exceptional and reasonable ground is there and it appears that the petitioners have falsely been implicated and to hold that a person accused of an offence, is not likely to misuse his liberty, there are certain facts, which are to be considered at the time of granting anticipatory bail like nature and gravity of accusation, incidental possibility of absconding of accused and the conduct of accused.

It has been held in various judgments of this Court as well as of Hon'ble the Supreme Court that Court should not exercise its discretion to grant anticipatory bail in this regard considering magnitude and seriousness of offence. In case of unnatural death in the house of in-laws or other relatives of husband, a special care is to be taken.

The provisions of Section 438 Cr.P.C. lays down guidelines for considering the grant of anticipatory bail to the accused, which reads as under: -

“438. Direction for grant of bail to person apprehending arrest.-(1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely:-

- (i) The nature and gravity of the accusation;*
- (ii) The antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*

*(iii) the possibility of the applicant to flee from justice;
and*

*(iv) where the accusation has been made with the
object of injuring or humiliating the applicant by
having him so arrested, either reject the application
forthwith or issue an interim order for the grant of
anticipatory bail.”*

In view of these guidelines, it is mandatory on the part of the Court to ensure compliance with the prerequisite conditions for grant of anticipatory bail including nature and gravity of accusation.

Hon'ble the Apex Court in case **State of M.P. & another vs. Ram Kishna Balothia & another, (1995) 3 SCC 221** has considered the nature of right of anticipatory bail, which is as under: -

“We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code..... Also anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered

as violative of Article 21.”

Hon'ble the Apex Court in **Siddharam Satlingappa Mhetre vs. State of Maharashtra & ors., (2011) 1 SCC 694** after considering the earlier judgments laid down certain factors and parameters to be considered while considering the application for grant of anticipatory bail: -

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

i. the nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. the antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. the possibility of the applicant to flee from justice;

iv. the possibility of the accused's likelihood to repeat similar or the other offences.

v. where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large

number of people.

vii. the courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over-implication in the cases is a matter of common knowledge and concern;

viii. while considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. the court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. 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.

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

124. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.”

Keeping in view the facts and law position as discussed above, no ground is made out to grant anticipatory bail.

Dismissed.

02.02.2015
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(DAYA CHAUDHARY)
JUDGE