

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

CRM-M-7317 of 2015

Date of Decision: 06.04.2015

Tejinder Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. K.S. Dadwal, Advocate
for the petitioner.

Mr. A.S. Klar, AAG, Punjab.

SNEH PRASHAR, J.

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure (Cr.P.C.) read with Section 482 of Cr.P.C for grant of anticipatory bail to the petitioner in case FIR No. 59 dated 16.06.2009, under Sections 304-B registered at Police Station, Kahnuwan, District Gurdaspur.

2. Precisely, the story of the prosecution is that petitioner Tejinder Singh was married to Mandip Kaur d/o complainant-Sukhdev Singh on 01.03.2009. On the third day of marriage, the petitioner, his mother, sister and uncle expressed annoyance for not having been given a car in dowry, although a motorcycle and all other usable articles had been given. Tejinder

Singh did not visit his in-laws house after marriage. Mandip Kaur informed her father that she was being harassed and maltreated by her husband and other members of the family because their demand for car had not been fulfilled. On 16.06.2009 Sukhdev Singh-complainant was informed that her daughter had taken something and was unconscious. When he reached her matrimonial home he found her dead body lying in court yard of the house as she had died during the intervening night of 15/16.09.2009 by consuming some poisonous substance.

3. Learned counsel for the petitioner submitted that at the time of marriage the petitioner was on leave and he got his leave extended by 20 days and went back to his unit on 29.05.2009. The occurrence took place on 16.06.2009 in his absence, because he was not allowed leave by the authorities, he could not come home. He remained on his duty and without being served with any kind of notice he was declared proclaimed offender alongwith his sister who was also a co-accused. His sister filed a petition for quashing of the first information report in which this Court vide order dated 21.04.2014 directed learned trial Court to admit her on bail on appearance. Subsequently, the said order was made absolute vide order dated 05.08.2014.

Learned counsel contended that since the petitioner is an army personal, Section 475 of the Code of Criminal

Procedure (for short 'the Code') prohibits trial of an Army personal by the Judicial Magistrate without taking option of the concerned authorities for trial by way of court martial. In the light of the said provision, when the trial Court had no jurisdiction to conduct the criminal proceedings against the petitioner, the order passed without following the procedure provided under Section 475 of the Code declaring him a proclaimed offender is illegal and liable to be set aside and the petitioner be given the concession of anticipatory bail.

4. Admittedly in the first information report, petitioner Tejinder Singh, his mother Kuljit Kaur and sister Sumanjit Kaur were named as the accused. Both Tejinder Singh and Sumanjit Kaur could not be arrested and were declared proclaimed offender vide order dated 27.02.2010. Nothing has been produced by the petitioner to show that on 16.06.2009 when his wife Mandip Kaur died or at any subsequent stage he had applied to the concerned authorities for leave but the same was declined to him. His wife died just after 3½ months of their marriage. The allegation is that on the very third day after marriage the petitioner and his family members had started harassing and ill treating her as they had not been given a car in dowry.

It has been mentioned by the petitioner himself in para No.11 of his application that he had earlier filed CRM-M-

34794 of 2009 for anticipatory bail, which was dismissed on 11.01.2010. He also mentioned in Para No.14 that he had filed petition No. CRM-M-22772 of 2013 seeking quashing of the first information report including the order vide which he was declared proclaimed offender. He also relied upon the provisions of Section 475 of the Code but that petition was withdrawn by him on 16.10.2014 enabling him to seek other appropriate remedies as per the law. However, again the instant petition had been filed praying for grant of anticipatory bail.

5. It is under the garb of being an Army personnel that the petitioner has been avoiding the legal proceedings being conducted against him in the present case. Section 475 of the Code provides that when any military, navel or airforce personnel is brought before a Magistrate and has been charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases delivered to him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest military or air force station, as the case may be, for purpose of being tried by a Court martial. The occasion of the petitioner being brought before a Magistrate did not arise, as till date, his presence could not be procured even though he

had been declared proclaimed offender under Section 82 of the Code.

It is only on appearance of the petitioner before the Magistrate that the procedure provided under Section 475 of the Code will have to be observed.

6. The petitioner is the husband of the deceased and prima facie there are serious allegations of harassment and ill treatment of the deceased by him and his family members because of which she died within 3½ months of their marriage. Apart from that the petitioner already stands declared proclaimed offender vide order dated 27.02.2010. Thus, in view of aforesaid facts and circumstances and without going into merits of the case, in my considered opinion, the petitioner is not entitled to the concession of anticipatory bail and the petition is dismissed.

April 06, 2015
rashmi

(SNEH PRASHAR)
JUDGE