

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

Crl. Misc. No.M-2550 of 2016

Date of Decision: 22.01.2016

Simarjit Kaur

....Petitioner

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. N.S. Sidhu, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

This petition has been filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner in case FIR No.71 dated 23.11.2015 registered under Section 306/34 IPC (later on the offence under Section 304-B of IPC has been added) at Police Station Mehal Kalan, District Barnala, Punjab.

Learned counsel for the petitioner submits that no suicide note was recovered and the deceased was residing in her parental house since 03.10.2015. There was no direct communication between the petitioner and the deceased. Moreover, nothing is on record which shows that the petitioner instigated the deceased to take such an extreme step to end her life. Learned counsel also submits that the husband and mother-in-law of the deceased have already been arrested by the police. Nothing is to be

recovered from the petitioner and he is ready to join investigation.

Heard the arguments of learned counsel for the petitioner and have also perused the allegations levelled in the FIR.

Said FIR was registered on the basis of statement of Karnail Singh, father of the deceased. The daughter of the complainant was married with accused Kuldeep Singh on 28.03.2015. As per allegations levelled in the FIR, an amount of ₹ 17 lacs was spent on the marriage but in-laws of the deceased were not happy due to insufficient dowry and they started to harass the daughter of the complainant. His daughter was thrown out of the matrimonial home on 03.10.2015 and was asked to bring some more dowry, if she wanted to reside in the matrimonial home. A demand of car was also made. The daughter of the complainant went to school in the morning on 21.11.2015 but did not return. An inquiry was made from the school authorities but her family members came to know that she has taken leave for two hours. A search was made but she could not be traced out. Later on, the dead body of the daughter of the complainant was found from canal of Harigarh near bridge of Village Bunger. On the basis of statement made by father of the deceased, the FIR was registered. Initially, the FIR was registered under Section 306/34 IPC but subsequently, Section 304-B IPC was added. The anticipatory bail of the petitioner has been sought only on the ground that no suicide note was recovered and the deceased was residing in her parental home since 03.10.2015. The mother-in-law and husband of the deceased have already been arrested by the police and nothing is to be recovered from the petitioner.

On perusal of contents of the FIR, it appears that specific allegations are there for demand of dowry and harassment. It is also mentioned that the deceased was ousted from her matrimonial home and

was residing in her parental home. The dead body of the deceased was recovered from the canal. Admittedly, the death has occurred under suspicious circumstances as the deceased was not being well treated by her in-laws. The marriage of daughter of the complainant was solemnized on 28.03.2015 and immediately thereafter, constant demand of dowry was there. The allegations were levelled against husband, mother-in-law and the present petitioner, who is sister-in-law of the deceased and the husband and mother-in-law of the deceased have already been arrested. Not only the allegations of demand of dowry are there but the deceased was also harassed because of which the daughter of the complainant committed suicide. Two accused are behind bars and against the present petitioner, same allegations are there. For conducting a fair and thorough investigation, the custodial interrogation of the petitioner is required.

Accordingly, keeping in view the nature of offence and specific allegations levelled against the petitioner regarding demand of dowry and harassment, which has resulted into death of daughter of complainant, no ground is made out to grant anticipatory bail to the petitioner. At the time of granting anticipatory bail, the nature of offence, allegations and certain other factors are to be seen. Hon'ble the Apex Court in a judgment rendered in **Bhadresh Bipinbhai Sheth Vs. State of Gujarat and another** 2015 (8) JT 125 has summarized certain factors to be taken into consideration while granting anticipatory bail, which are reproduced as under:

“The principles which can be culled out, for the purposes of the instant case, can be stated as under:

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier

occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-

conviction stage or post-conviction stage.

(iv) There is no justification for reading into Section 438 CrPC the limitations mentioned in Section 437 CrPC. The plenitude of Section 438 must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

(vi) It is a settled legal position that the court which grants the

bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) We shall also reproduce para 112 of the judgment wherein the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) 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;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) 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 the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) 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 free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of

tampering of the witness or apprehension of threat to the complainant;

(j) 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.

Accordingly, there is no merit in the submissions made by learned counsel for the petitioner and the petition, being devoid of any merit, is hereby dismissed.

22.01.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE