

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

(i) Criminal Misc.No.M-33799 of 2016 (O&M)
Date of Decision : 22nd November, 2016

Jaswinder Kaur

..... Petitioner

Versus

State of Punjab

..... Respondent

(ii) Criminal Misc.No.M-33808 of 2016 (O&M)

Sukhwinder Kaur

..... Petitioner

Versus

State of Punjab

..... Respondent

(iii) Criminal Misc.No.M-36256 of 2016 (O&M)

Jyoti alias Sukhwinder Kaur and another

..... Petitioners

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Prateek Pandit, Advocate
for the petitioners.

Mr. K.S.Pannu, DAG, Punjab
for the respondent(s)-State.

Mr. P.S.Hundal, Senior Advocate
with Mr. Jashandeep Singh, Advocate
for the complainant.

AJAY TEWARI, J. (Oral)

This order shall dispose of aforesaid three petitions, filed by the
petitioners, under Section 438 Cr.P.C., for grant of anticipatory bail in case

Criminal Misc.No.M-33799 of 2016 (O&M)

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FIR No.132 dated 05.08.2016, registered at Police Station Sadar, District Jalandhar, under Sections 116, 306 IPC (Section 306 IPC added later).

The allegations were that the deceased had committed suicide because the petitioners were harassing her as they had taken some loan from her but they were not returning the same. They had also assaulted the husband of the deceased and this fact was corroborated by way of dying declaration of the deceased, recorded by the learned Judicial Magistrate Ist Class.

On 23.09.2016, this Court passed the following order in Criminal Misc.No.M-33799 of 2016 and Criminal Misc.No.M-33808 of 2016:-

Learned counsel for the petitioner argued that actually it was the petitioner, who alongwith other women, had returned the loan on behalf of the deceased and even reading of the FIR does not make out a case under Section 306 IPC.

Without commenting on this aspect, I do not deem it appropriate to dismiss the instant petition.

Notice of motion.

On the asking of the Court, Mr. B.S.Thind, AAG, Punjab has accepted notice on behalf of respondent(s)-State.

Learned counsel for the petitioner undertakes to supply the complete copy of the paper book to the learned State counsel during the course of the day.

Service is complete.

Adjourned to 22.11.2016.

Meanwhile, an interim direction is issued that the petitioner will join investigation on 30th September, 2016, or any other day as required by the investigating officer and in case of her doing so, she will be released on interim bail to the satisfaction of the arresting officer.”

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On 07.10.2016, this Court passed the following order in Criminal Misc.No.M-36256 of 2016:-

“Learned counsel states that similarly situated co-accused has been granted the concession of interim bail by order dated 23.09.2016 passed in CRM-M-33799-2016.

Notice of motion.

On the asking of the Court, Mr. B.S. Thind, Assistant Advocate General, Punjab, accepts notice on behalf of the respondent.

Learned counsel for the petitioners undertakes to supply a copy of the paper book to the learned A.A.G. during the course of the day.

To come up alongwith CRM-M-33799-2016 on 22.11.2016.

In the meantime, in the event of arrest of the petitioners they shall be released on interim bail by the investigating officer subject to the conditions envisaged under Section 438(2) Cr.P.C. The petitioners shall also join the investigation and appear before the investigating officer as and when their presence is required.”

Learned counsel for the petitioners has argued that an offence under Section 306 is doubly hard to prove because if the allegations are taken to be true, the prosecution has to prove that the harassment/non-return/assault was done with the intention or knowledge that the victim will commit suicide. He has also stated that the petitioners have joined the investigation and in case the prosecution is able to prove this fact, they would be liable to suffer whatever punishment be imposed upon them, but at this stage their custodial interrogation cannot be insisted upon.

Learned State counsel, on instructions from Head Constable Vijay Kumar, states that the petitioners have joined the investigation.

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Learned Senior Counsel, appearing on behalf of complainant, has argued that the dying declaration of the victim would disentitle the petitioners from getting anticipatory bail.

However, in my opinion, this argument is too extreme. No doubt, if the prosecution proves that firstly, the actions as complained about in the dying declaration, took place and secondly that they were done with the intention or knowledge and as a result of those allegations, the deceased would commit suicide, the petitioners would be liable to face imprisonment. But at this stage, in my considered opinion, their custodial interrogation cannot be insisted upon.

In these circumstances, the petitions are allowed. Interim orders dated 23.09.2016, passed in Criminal Misc.No.M-33799 of 2016 and Criminal Misc.No.M-33808 of 2016, and order dated 07.10.2016, passed in Criminal Misc.No.M-36256 of 2016, are made absolute subject to the conditions envisaged under Section 438(2) Cr.P.C.

(AJAY TEWARI)
JUDGE

22nd November, 2016

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Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No