

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

Crl. Misc.-M No.38935 of 2016 (O&M)
Date of Decision: 29.11.2016

Vishal Seth ...Petitioner
Versus

State of Punjab and another ...Respondent

with

Crl. Misc.-M No.38937 of 2016 (O&M)

Saroj and another ...Petitioners

Versus

State of Punjab and another ...Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Navkiran Singh, Advocate
for the petitioners.

Mr. VPS Sidhu, A.A.G. Punjab,
counsel for the respondent-State.

Mr. Veneet Sharma, Advocate
for the complainant.

ANITA CHAUDHRY, J.

By this order, I propose to dispose off two petitions seeking anticipatory bail in FIR No. 20 dated 07.04.2016, registered under Sections 306/34 (Sections 304-B, 498-A, 420, 120-B IPC added subsequently), Police Station Division-D, Amritsar, District Amritsar.

The first petitions for anticipatory bail of all the petitioners were dismissed as there was concealment of facts. The complete suicide note was not placed on record and some words were deliberately changed to give a different sense.

Notice was given only regarding maintainability of the petitions.

The counsel for the petitioners urges that the second petition for anticipatory bail would be maintainable as some new facts have been discovered. The counsel had referred to para no. 25 of the judgment of the Full Bench of the Rajasthan High Court reported as ***Ganesh Raj Vs. State of Rajasthan 2005(3) RCR (Crl.) 30*** and para no. 20 of the judgment of the Jharkhand High Court reported as ***Bhimal ram Vs. State of Jharkhand 2010(1) AIR Jhar R 259***. It was urged that in the first petitions a portion of the suicide note was produced and the Court was of the opinion that the petitioners had tried to mis-lead the Court, which was not and they could not have the entire suicide note with them and the settled position of law is that the second or subsequent bail application can be filed if there is a change in the fact or in the law. The counsel also refers to ***Sheetal Singh Vs. State of Punjab in Crl. Misc. No.18900 of 2015, D.O.D. 29.06.2015 (P&H)***, ***Sucha Singh Vs. State of Punjab in Crl. Misc. No.3415 of 2012, D.O.D. 29.02.2012 (P&H)***, ***Kamlesh Vs. State of Maharashtra 2007(5) RCR (Crl.) 669*** and ***Ram Khilari @ Khillo Vs. State of Rajasthan 1994(4) CCR 3047***. The counsel further urges that they have now been able to lay hands on some conversations between the deceased and her husband and that would

show that she had no problem with the husband or his family and in fact she was suffering from some mental illness and had suicidal tendencies and they had got the CD analyzed from a psychiatric and after evaluation it has been reported that the girl had suicidal ideation which indicated a form of mental disorder. It was urged that even if the suicide note is read, the allegations are mainly against the husband and not against the in-laws.

The petitions are opposed by the complainant as well as by the State. The counsel for the complainant has referred to *S.P. Changalvaraya Naidu Vs. Jagannath 1994 AIR (SC) 853*, *Dhan Raj Vs. State of Punjab 1996(3) RCR (Crl.) 509*, *Richa Sharma @ Happy Vs. State of Punjab 2001(1) RCR (Crl.) 438*, *Ashwani Kumar Vs. State of Punjab 2002(3) RCR (Crl.) 450*, *Harmail Singh Vs. Punjab State 2003(3) RCR (Crl) 595*, *Baldev Singh Vs. State of Punjab and another 2006(1) RCR (Crl.) 119*. Counsel for the complainant had urged that the girl was highly educated and had done her BCA and her MBA and before this unfortunate incident, she sat for an examination and the authenticity of the conversation in the CD has not been determined and is not to be decided here and the fact that the petitioners were recording her normal conversation goes to show their conduct and the pressure which they were building up and the incident had taken place within five months of the marriage and the petitioners cannot be heard as they had obtained the interim order by concealing the facts and had twisted the words in the partial suicide note kept on the record.

The following order was passed on 02.02.2016 :-

“Learned counsel for the petitioners states that a suicide note was left by the girl and there was not even a whisper against the father-in-law and a good word were said for the mother-in-law but the mother of the deceased had referred to the family at the end of the complaint.

On oral request, the petitioner is permitted to implead the complainant as respondent-party. Amended memo of parties be filed and thereafter notice of motion be issued, returnable for 19.08.2016.

In the meanwhile, the petitioners are directed to join the investigation and if they are sought to be arrested, they shall be released on bail to the satisfaction of the arresting/investigating officer subject to the conditions laid down in section 438 sub section 2 clauses (i)(ii) and (iii) of the Code of Criminal Procedure.”

In the petition that was filed by the in-laws and the husband, only a part of the suicide note was placed on record and the submissions made on behalf of the complainant were noted as under:-

“The complainant side has appeared and has placed on record copy of the suicide note, which runs into five pages.

The counsel for the complainant has urged that a wrong statement was made to mis-lead the Court and the complete copy of the suicide note was not placed on record and in the last 7 - 8 lines of first page of the suicide note reference is to the mother of the victim and not to the

mother in law and purposely the words have been twisted and photocopy of the vernacular placed on record is not in the hand of the deceased and has been manipulated to get a favourable order.”

After noticing the fact that few words had been changed in the copy of the suicide note, which was filed along with the petitions, the petitions were dismissed as the petitioners had mis-lead the Court. The following observations were made in the petition (Crl. Misc. No. M-19834 of 2016) filed by Saroj and Vinay Seth:-

“The suicide note written by the deceased runs into five pages. The vernacular of Annexure P-2 is a hand written note and not the photocopy of the suicide note but in a hand writing of some other person. The last lines have been completely changed to show that the reference was to the mother in law whereas the reference was to the victim's own mother and in the end the victim had asked her mother to go and live with the brother namely Sumit. The other pages clearly reflect that reference is to the mother.”

The Full Bench of Rajasthan High Court while placing reliance on ***Kalyan Chand Sarkar Vs. Rajesh Ranjan @ Pappu Yadav*** 2005(1) RCR (Crl.) 703 (SC) case had observed as under:-

"25. In the ultimate analysis, placing reliance on the ratio indicated in Kalyan Chandra Sarkar's case (supra), we hold that second or subsequent bail application under Section 438 Criminal Procedure Code can be filed if there is a change in the fact-situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which

an accused who has been denied bail earlier, can move a subsequent application. Second or subsequent anticipatory bail application shall not be entertained on the ground of new circumstances, further developments, different considerations, some more details, new documents or illness of the accused. Under no circumstances the second or successive anticipatory bail application shall be entertained by the Section Judge/Additional Sessions Judge."

A subsequent or a second bail application can be filed only in the limited area and it cannot be entertained on new circumstances or new developments or by giving more details or by giving new documents. The facts of the present case are entirely different. The petitions were rejected since it was a case of concealment of fact. It is held that the second petition for anticipatory bail is not maintainable.

Both the petitions are dismissed.

(ANITA CHAUDHRY)
JUDGE

29.11.2016

'Sunil'

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No