

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

**Criminal Misc. No. M-23085 of 2018
Date of decision: 25.03.2019**

Mandeep Kaur

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. G.S. Hayer, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. DAG, Punjab
for the respondent -State.

Daya Chaudhary, J.

Petitioner-Mandeep Kaur has filed the present petition under Section 439 Cr.P.C. for grant of regular bail to her in case FIR No.73 dated 13.08.2017 registered under Section 307 IPC and Sections 302 and 120-B IPC added later on at Police Station Smalsar, District Moga.

Learned counsel for the petitioner submits that the alleged incident occurred on 12.08.2017 at 8:00 am whereas the FIR was registered on 13.08.2017 at 8:00 pm. The petitioner was not named in the initial statement made by the complainant on 13.08.2017, on the basis of which, the present FIR was registered. Only name of one Daljeet Singh @ Jitta was mentioned. The petitioner has been implicated on the basis of supplementary statement made by complainant on 17.08.2017 i.e. after a period of two days of death of her husband and after six days from the date of alleged incident. Learned counsel further submits that the petitioner has

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falsely been implicated in the case by the complainant in connivance with his nephew Kulwinder Singh and the police officials just to oust the petitioner from the legal share of the property of her husband. Learned counsel also submits that as per allegations, the petitioner has been alleged to have illicit relations with one Daljeet Singh but there is no evidence to connect the petitioner with the alleged incident. The petitioner remained with her husband in the hospital and every possible care was taken by her till his death. Subsequently, a supplementary statement was made by the complainant on 17.08.2017 just to deprive the petitioner and her daughter from the property being successor of her husband and to oust her from matrimonial home. Learned counsel also submits that after presentation of challan and framing of charges, all the material witnesses including the complainant have been examined. There are total 22 prosecution witnesses. The petitioner is in custody since 22.11.2017. Learned counsel also submits that the petitioner is having a girl child of four years, who is also in jail with the petitioner. Learned counsel for the petitioner has also relied upon order passed by this Court in ***Manjeet Kaur vs. State of Punjab, CRM-M No.23843 of 2018 decided on 08.08.2018.***

Learned State counsel has not disputed the custody period; stage of trial as well as examination of material witnesses including the complainant. However, he has opposed the regular bail not only on the ground of seriousness of offence but the motive was also there to kill her husband as she was having extramarital relation and husband of the petitioner was not happy with the same. Learned State counsel also submits that the custody is also on lesser side.

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Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the contents of the FIR and other documents available on the file.

Undisputedly, in the initial statement made by complainant, the petitioner was not named but she has been implicated on the basis of supplementary statement made after six days of alleged incident. The motive alleged in the FIR, is that the petitioner was having illicit relation with one Daljeet Singh but no evidence was collected during investigation. The talks on two mobile numbers are there but it cannot be said that the same was because of illicit relations. In case, the husband of the petitioner was aware about the relationship of the petitioner with third person, he could have made complaint to any police authority but no such allegation is there in the FIR. Motive as well as allegations are matter of evidence, which shall be tested during trial.

Admittedly, the petitioner is having a daughter of four years, who is also with her as there is no other person in the family to look after the minor child.

Same issue was there in **Manjit Kaur's case (supra)**, as in that case also child of 1½ years was also in the jail with the accused-mother and by considering the special circumstances of the case, the bail was granted to the mother by taking into consideration the welfare of the child and following observation was made: -

“Admittedly, main accused, namely, Angrez Singh, who is husband of the petitioner, is also in custody along with other family members. The petitioner is having a minor daughter of about 16 months of age and all her family

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members are in Jail. There is no other person in the family to look after the minor child. There are exceptional circumstances as the petitioner, being the mother of the child is to take care of the interest of the minor child. The continuous detention of the petitioner would lead to detention of her minor child as well. It may cause psychological harm to the child and may make her misfit in the society.

The daughter of the petitioner is hardly 1½ years of age and there is no other family member to look after her. The child requires love, affection as well as care of the family especially of the mother. The children who are with the accused in the custody are required to be given priority in comparison to other accused. No doubt, some of the facilities are available in jail for the children but the atmosphere of the jail is not conducive for proper growth of the children. The stay of children in crowded barracks amidst women convicts, undertrials, offenders relating to all types of crimes including violent crimes, is harmful for such children for their personality development and they are required to be separated from such an environment on priority basis. A child living in a jail along with her incarcerated mother is not desirable at all and it should be as only the last resort when all other possibilities of keeping the child under safe custody elsewhere have been tried and have failed. Sometimes such children may display violent and aggressive as they never experienced a normal family life because of the reason that the prison environment is not conducive for their normal growth and development. The continuous detention of the child may cause psychological harm to the children and may make them misfit in the society. Moreover, as per provisions of

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Section 437 Cr.P.C and proviso added to that the Court has power to release the accused or such person is under the age of sixteen years or is a woman or sick or infirm.”

In the present case also, there are special circumstances as the petitioner is having a girl child of four years with her in the jail and no other person is there in the family to look after the interest of the minor child, the present petition is allowed and the petitioner (Mandeep Kaur) is directed to be released on regular bail on furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate.

25.03.2019
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No