

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

CRM-M-31114-2018 (O&M)
Date of decision: 12.4.2019

Shivraj Kumar

... Petitioner(s)

VERSUS

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Guninder Singh Brar, Advocate.
for the petitioner.

Mr. V.G. Jauhar, Sr. DAG, Punjab.

Mr. Ravi Gakhar, Advocate,
for respondent No.2.

RAJ SHEKHAR ATTRI, J. (Oral)

The present petition has been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No.84 dated 15.4.2018 registered for the offences punishable under Sections 354, 506, 34 of Indian Penal Code (Section 306 IPC added later on), at Police Station Sadar Khanna, District Ludhiana.

Heard.

The facts of the case are that Surjit Singh deceased was a mason. He committed suicide by putting himself to fire on 12.4.2018. When he was lying admitted in the hospital, he suffered two statements, firstly before the police on 12.4.2018 (Annexure P-2) wherein he stated that he caught fire by accident. This statement was also signed by his wife Smt. Yashpal Kaur and his father Teja Singh. When his condition became

and he suffered statement before the Magistrate on 13.4.2018 in the presence of a doctor wherein he stated that accused petitioner-Shivraj Kumar and co-accused Shrikant used to harass his wife in his absence and although, he reported the matter to the police but no action was taken.

After his death, statement of the wife of the deceased namely Smt. Yashpal Kaur was recorded wherein she stated that her husband had been doing mason work and used to remain out of home for his work and in his absence, both petitioner as well as Shrikant (co-accused) badinage with her, unnecessary visiting her house and started physically titillating and on one day when she was washing the clothes, Shivraj accused petitioner came secretly and grasped her from behind and started rubbing his hands on her body. Even on 20.2.2018, she was sleeping in her home, Shrikant entered her room. He laid on her cot and started muscling with her. All these facts were told to her husband. When the deceased complained, both the accused threatened to kill him.

After registration of the FIR, co-accused Shrikant was arrested and later on, was granted regular bail by this Court in CRM-M-25016-2018 vide order dated 19.7.2018.

I have heard learned counsel for the parties and gone through the record.

Counsel for the petitioner has submitted that in fact there is a money dispute between the deceased and the sister of the petitioner for which a compromise (Annexure P-3) was effected on 24.3.2018 i.e. prior to the present occurrence and due to this, the petitioner has been falsely implicated at a later stage.

On the other hand, counsel for the complainant has submitted

that statement (Annexure P-2) was concocted by police in connivance with the petitioner and his co-accused when the deceased was lying in highly injured condition and was not fit to make statement. Prosecution version is nothing but mere concocted and twisting of the facts by the police and in fact, the dying declaration of the deceased transpires that he committed suicide due to the act and conduct of the petitioner and his co-accused.

I have given my thoughtful consideration to the contentions of the counsel for the parties.

The remedy of anticipatory bail is extraordinary and should be used in exceptional cases. The Hon'ble Supreme Court in **Siddharam Satlingappa Mhetre v. State of Maharashtra and others** 2011 AIR (SC)

312 pleased to issue the following parameters:-

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail :

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. 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;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. 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 accused is implicated

- with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii. 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 the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- x. 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.”

In this case, there is a dying declaration of the deceased recorded before the concerned Judicial Magistrate in the presence of a doctor. However, the counsel for the petitioner relied upon Annexure P-2 which is the statement of the deceased recorded on 12.4.2018 when he was admitted in the hospital. This is a matter of evidence and the evidentiary value thereof shall be considered at the appropriate stage of the trial. However, keeping in view the seriousness of the offence and totality of the circumstances, custodial interrogation of the petitioner is required and he is not entitled to the concession of pre-arrest bail.

Dismissed.

(RAJ SHEKHAR ATTRI)
JUDGE

April 12, 2019
Paritosh Kumar

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No