

Sr. No.103

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

**CRM-M-18106-2019(O&M)
Date of decision:30.04.2019**

Mandeep Kaur

..... Petitioner

versus

State of Punjab

..... Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Tribhawan Singla, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

This is a petition filed under Section 438 Cr. P.C. for grant of anticipatory bail to the petitioner in case FIR No.56, dated 18.02.2019 under Sections 306, 34 IPC, registered at Police Station City Barnala, District Barnala.

FIR in the present case had come into being on statement of Nazeera Begum, the mother of the deceased in which she had stated that his son was married to one Gagandeep Kaur and out of that wed lock a daughter was also born. It was further alleged that after 5-6 months of marriage of the couple, the wife of the deceased had started quarreling with the son of the complainant. She tried to console her son and daughter-in-law. However, after some time, they had started residing separately in a rented accommodation. While residing separately, the son of the deceased had developed illicit relations with the present petitioner. It was further alleged that the present petitioner was having very good relation with one Ravi and Jyoti and they were working together in an Orchestra. Due to the illicit relations of the deceased with Mandeep Kaur, the daughter-in-law of the

complainant had gone to Bahrain, from where she used to threaten the son of the complainant that she would get him killed through present petitioner and Ravi and Jyoti. It was further alleged that for the past 5-7 days the son of the complainant used to say that he was having danger from all the above said four persons. Day before the incident, the son of the complainant was upset and wanted to return to the complainant. However, in the night itself, the land-lord of the house, where the son of the complainant was residing as a tenant, informed the complainant that the deceased was sick. When the complainant reached at the spot, she found that the deceased was having a dupatta tied around his neck and was hanging with a ceiling fan. Therefore, it was alleged that the son of the complainant has committed suicide by feeling harassed because of threats being extended by his wife on account of illicit relations of the deceased with the present petitioner.

While arguing the case, learned counsel for the petitioner has submitted that the case against the petitioner is totally false. It is further submitted that the allegation against the petitioner itself is that the wife of the deceased was threatening to get the deceased eliminated through the present petitioner. Had there been any illicit relations between the petitioner and the deceased, then the wife of the deceased would not have taken the help of the present petitioner in the alleged crime. It is further submitted that other co-accused of the petitioner have already been granted concession of anticipatory bail by this Court.

Of course, the accused, as an individual, has a right to life and liberty, however, that right to life and liberty can be curtailed according to the procedure prescribed by the law. In case of criminal investigation, the ordinary prescribed procedure is that the Investigating Officer can arrest the

accused even without warrant. But; to ensure that innocent person is not unduly harassed by the Police Officers by misusing their authority, special and extraordinary power has been conferred upon the courts to protect the individual from unnecessary harassment. However; this power is so extraordinary that this is not even available in some parts of the country qua all the offences and qua some offences under special statutes; not available in the entire country. Therefore, being a special power, the power under Section 438 Cr.P.C has to be exercised only in cases, where there are circumstances leading, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that if the accused is protected from the arrest, then the investigation of the case shall not be unduly hampered.

In the facts of the present case, the allegation against the petitioner is of having illicit relations with the deceased. In a connected petition, the wife of the deceased had filed application for anticipatory bail. In that case, it was disclosed by wife of the deceased that she was sent to Bahrain for stage show, which was booked by her husband, that is the deceased himself. It was also pointed out that after she had gone to Behrein, her passport was also taken by the travel agency and they were not permitted to come back in between. Therefore, she was not even aware of what was happening back home in India.

It is not even disputed that 4-5 persons are named in the FIR as the persons colluding in abetting the deceased to commit suicide. However, out of 4-5 persons, it is the petitioner only, against whom there is allegation of having illicit relations with the deceased. Since the deceased expired at a time when his wife was not even in India and the deceased was in contact with the petitioner only, being in illicit relation with her, as per the

allegations. Therefore, this Court, does not find any extenuating circumstances in favour of the petitioner, so as to grant her the anticipatory bail, by exercising its power under Section 438 Cr.P.C.

Otherwise also, the petitioner is stated to be the person who was in intimate contact with the deceased at his last time, as per the allegations. Therefore, it would be only the petitioner, who could explain the situation which might have led the deceased to commit the suicide. If the petitioner is granted any protection of the Court Order, Police may not be able to extract the correct answers of the intimate situation prevalent between the deceased and the petitioner, immediately before the death of the deceased. Therefore, in considered opinion of this Court, if the petitioner is granted protection by this Court, the same may also hamper the free and fair investigation by the police.

In view of this, there is no ground to scuttle the full and fair investigation by the police; in its right earnest.

Dismissed.

30th April, 2019

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*