

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

Sr. No.101

**CRM-M-22288-2019
DECIDED ON: May 16, 2019**

GURJIT KAUR

..PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Ms. Shikha Jaidka, Advocate, for the petitioner.

Mr. Deepak Goyal, Advocate, for the complainant.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition seeking anticipatory bail to the petitioner in case FIR No. 48, dated 30.03.2019, under Sections 323, 326, 506, 34 IPC, registered at Police Station Dugri, District Ludhiana.

The FIR in the present case came to be registered on the statement of minor girl Arshdeep Kaur; with the allegation that she has passed the 8th standard in the school. She has one brother. Their mother had expired. After expiry of their mother, her father Sukhpal Singh re-married with the petitioner. The petitioner was already having two daughters, aged 07 years and 04 years, from her earlier husband; when she married with the father of the complainant. However, right from the beginning, her step-mother did not like the complainant and her brother. She made their father to beat the complainant and her brother. On

CRM-M-22288-2019

26.03.2019, the present petitioner incited the father of the complainant by alleging that the complainant has been used to talking with the boys on phone. On being propped-up by the present petitioner, the father of the complainant started beatings her. When the complainant tried to refute the allegations levelled by the petitioner then even the petitioner started giving beatings to her. However, ultimately, the complainant was saved by her aunt (Tai) Bhupinder Kaur and then she took the complainant to the top floor of the house. In the evening, again the present petitioner gave beatings to the complainant, and on being propped-up by the petitioner, the father of the complainant dragged her by her hairs and tried to strangulate the complainant. Thereafter, the complainant was thrown out of the house with a retort that she should not return to their house. Lateron, the residents of the area and the aunt of the complainant persuaded the father of the complainant to keep her in the house. Thereafter, the complainant was kept hungry and terrified throughout the night. The matter did not end here, on 27.03.2019 again the present petitioner started saying bad things to the complainant and put Phenyl near her. Firstly, the petitioner told the father of the complainant that complainant should drink the Phenyl and when she did not oblige, then the petitioner forced the complainant to drink that Phenyl. Thereafter, she was turned out of the house, while she had started vomiting. Then, the residents of the area arranged for a vehicle and took the complainant to Mediway Hospital, Ferozepur Road, Ludhiana and she was admitted there. From the hospital, the maternal uncle, Manjit Singh, of the complainant had taken the complainant to their own home. At present, she is residing at the house of the maternal uncle.

While arguing the case, learned counsel for the petitioner submits that the petitioner had not forced the complainant to drink the Phenyl. It is further submitted that it is only out of the siblings rivalry that the present case has arisen; because the petitioner is also having two children. Still further it is submitted that the husband of the petitioner, namely, the father of the complainant, has already been granted interim protection. Hence, the petitioner also deserves to be granted anticipatory bail.

Having heard learned counsel for the petitioner and perused the file, this Court does not find any substance in the argument of the learned counsel for the petitioner.

Of course, the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C; is that the Investigating Officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the Investigating Agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in some part of the country qua all the offences and under some special statutes qua some specified offences, this power is not available even throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case

lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

Coming to the facts alleged in the present case, it is straight allegation that it was the petitioner only who had brought the Phenyl and put it before the complainant; and then coerced her to drink the same. When she refused, the complainant was scared to such an extent that she was constrained to drink the same. Needless to say that the complainant is a minor girl of 14 years; who has already lost her mother. The petitioner being the second wife of the father of the complainant, was supposed to pay extra care to the minor children. However, as per the allegations she had started harassing the children; so as to get rid of them. As facts would show, the petitioner has even succeeded in getting the said minor girl away from her home by separating her from her father. By any means, as per the allegations levelled in the complaint, this Court does not find any mitigating circumstances, showing the ex facie innocence of the petitioner, vis-a-vis the allegation levelled against the petitioner in the complaint.

Argument of the learned counsel for the petitioner that the petitioner had not forced the complainant to drink Phenyl, cannot be accepted at this stage. There is no reason, at this stage, to disbelieve a minor child, who is forced to make complaint against her own father along with the petitioner, just because of the situation created by the petitioner only.

Although, learned counsel for the petitioner has submitted that the father of the complainant, the husband of the petitioner has been granted

CRM-M-22288-2019

concession of anticipatory bail, however, the order passed by this Court would make it abundantly clear that he has been granted interim protection only because he had assured the Court that he would deposit Rs.2.5 lacs in the name of each of the children from the first wife. He had also argued that, in fact, it is not he who had forced the minor daughter to drink Phenyl. Therefore, even the case of the husband of the petitioner is in the same line, as is alleged by the complainant. Otherwise also, this Court is of the opinion that if the petitioner is granted the concession of anticipatory bail, that would hamper free and fair investigation, which is required in the present case.

Dismissed.

May 16, 2019
Ankur

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No