

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

**CRM-M-23817 of 2019
Date of Decision: 31.5.2019**

Meena

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Abhishek Sindhvani, Advocate
for the petitioner (s).

Mr. Manoj Kumar Sangwan, DAG, Haryana.

Mr. Pankaj Kaushik, Advocate,
for the complainant.

RAJ SHEKHAR ATTRI, J.

The present petition has been filed under Section 439 Code of Criminal Procedure (in short, “Cr.P.C”) for grant of regular bail to the petitioner in case FIR No.250 dated 1.10.2018 registered for the offences punishable under Sections 304-B of Indian Penal Code (for short, “IPC”) at Police Station Sadar, Narwana.

Heard.

Initially, the application of the petitioner for anticipatory bail was dismissed by this Court vide order dated 2.4.2019. The petitioner preferred an Special Leave to Appeal (Crl.) No.3602 of 2019 before Hon'ble Supreme Court which was dismissed of by passing the following orders : -

“We find no reason to entertain this special leave petition, which is, accordingly, dismissed. Pending application (s), if any, shall stand disposed of.

Four weeks' time is granted to the learned counsel for the petitioner to file regular bail application which shall be decided expeditiously.”

Through the present petition, the petitioner (before surrendering himself before the trial court) has prayed for grant of regular bail in pursuance of the orders of Hon'ble Supreme Court and it has been asserted that he be deemed to be in custody of the Court in the light of the said order.

This case relates to death of Smt. Pooja who was married with one Sumit on 9.3.2015. After sometime of the marriage, the deceased disclosed to her brother Pardeep Kumar complainant that Sumit had illicit relations with his sister-in-law (*bhabhi*)-Smt. Meena (petitioner herein) and she (deceased) herself had seen both of them in compromising position.

Various *panchayats* were convened to get understand both, Sumit and Meena petitioner but they did not desist. This was the subject matter of quarrel between the deceased and her husband.

In this case, the petitioner has not been arrested nor she ever joined the investigation.

Hon'ble Supreme Court in **Vijay Singh v. State (Govt. of NCT of Delhi)** 2017 (2) AD (Delhi) 106 has observed as under : -

“8. Section 439 Cr.P.C. makes it abundantly clear that an application for the grant of regular bail can be moved by an accused while he is "in custody". It is only while "in custody" an application under Section 439 Cr.P.C. can be moved for the grant of bail. In the present matter, what appears that the application under Section 439 Cr.P.C. was moved by the

accused before the trial court on 16.11.2016 when he was not in custody rather he was outside the jail on that day. It is apparent from the record that the application for the grant of regular bail under Section 439 Cr.P.C. was moved by the accused before the trial court on 16.11.2016. For that reason, the bail application moved by the accused/petitioner before the Court of Session was not maintainable.”

Hon'ble Apex Court in the case of Sunita Devi v. State of Bihar and Anr. AIR 2005 SC 498 observed as under :

"In view of the clear language of Section 439 and in view of the decision of this Court in Niranjana Singh and Anr. v. Prabhakar Rajaram Kharote and Ors. 1980 Cri LJ 426, there cannot be any doubt that unless a person is in custody, an application for bail under Section 439 of the Code would not be maintainable. The question when a person can be said to be in custody within the meaning of Section 439 of the Code came up for consideration before this Court in the aforesaid decision."

Keeping in view the facts and circumstances of the case and the seriousness of the offence, the petitioner is not entitled to the benefit of regular bail.

Dismissed.

May 31, 2019

Paritosh Kumar

(RAJ SHEKHAR ATTRI)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No