

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

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IN VIRTUAL COURT

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**CRM-M No. 35570 of 2020
Date of decision : 3.11.2020**

Surjit Singh and another

.....Petitioners

Vs.

State of Punjab

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Arnav Sood, Advocate, for the petitioners

Rajbir Sehrawat, J. (Oral)

The present petition has been filed by the petitioners under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No. 162 dated 19.10.2020, registered under Sections 304B, 34 IPC, at Police Station Sadar, Hoshiarpur.

The FIR in this case came into being on the statement of Manjit Kaur, the mother of the deceased Satwinder Kaur, in which it was alleged that the complainant had performed the marriage of her daughter with the son of the petitioners in February 2019. Thereafter, the petitioners/the father-in-law and the mother-in-law; and the husband of the deceased had started taunting the deceased for bringing less dowry. Despite that the deceased had tolerated that harassment for long time. Then she was blessed with a daughter, who is 10 months old now. But even after giving birth to a girl child, the harassment of the deceased by the petitioners did not stop. As per the allegations, on 18.10.2020 at about 2:00 p.m., the daughter of the complainant called her on phone and informed that her husband, father-in-law and the mother-in-law;

were troubling her and that she had a threat to her life. Still further, the deceased told her mother to come and take her from the house of the petitioners. But after some time, the son-in-law of the complainant gave a call to her and informed that her daughter had expired. When the complainant reached the matrimonial house of her daughter, then she found that the dead body of her daughter was lying in a room on a bed. Hence, it was alleged by the complainant that her daughter was killed by the in-laws and husband of her deceased daughter.

Arguing the case, the counsel for the petitioners has submitted that the case against the petitioners is totally baseless. There are only general allegations against the petitioners. No separate and specific allegation has been levelled. It is further submitted that there is a 10 months old daughter of the deceased, who is being looked after by the petitioners. Still further, it is submitted that the husband of the deceased i.e. son of the petitioners has already been arrested. There is nobody to take care of the minor child. The petitioners shall join the investigation. Hence, they deserve to be protected against their arrest.

Notice of motion.

Mr. Ramdeep Partap Singh, DAG, Punjab, accepts notice on behalf of the State.

The counsel for the State has submitted that the names of the petitioners are specifically mentioned in the FIR. There are specific allegations against the petitioners that they pressurized the deceased and harassed her for dowry to such an extent, which led to end of her life. It is further submitted

that immediately before the death also, the deceased had expressed threat to her life. The petitioners were very much present in the house when the deceased lost her life. There is a presumption of law against the petitioners; because the death has taken place within one and a half year of the marriage. The investigation is at the initial stage. Therefore, the custodial interrogation of the petitioners is required. Hence, the petitioners do not deserve any concession of anticipatory bail.

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 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.

So far as the facts of the present case are concerned, this Court finds that there are specific allegations levelled against the petitioners. The allegations are qua harassment for dowry only. The deceased had expressed apprehension qua danger to her life even immediately before the death. Moreover, the deceased lost her life within one and a half year of the marriage. Therefore, this Court finds substance in the argument of the counsel for the State that there is a presumption against the petitioners, which they shall be required to rebut during trial. Hence, this Court does not find any ex-facie innocence on the part of the petitioners, vis-a-vis, the allegations levelled against them. Still further, this Court finds substance in the arguments of learned counsel for the State that the investigation being at an initial stage, the custodial interrogation of the petitioners would be required to unearth the true dimensions of the crime. Hence, if the petitioners are protected against arrest at this stage; then free and fair investigation of the case would also hampered.

In views of the above, this Court does not find it to be a fit case to exercise its powers under Section 438 Cr.P.C, so as to protect the petitioners against their arrest.

Accordingly, finding no merit in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

3.11.2020

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No