

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

**CRM-M No.11122 of 2021(O&M)
Date of Decision: 23.03.2021**

Nirmala Devi @ Nirmal Kaur Petitioner

Vs

State of Punjab Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Jasraj Singh, Advocate
for the petitioner.

Mr. Amar Ashok Pathak, Addl., A.G, Punjab.

RAJ MOHAN SINGH, J.

[1]. The petitioner seeks grant of anticipatory bail in case bearing FIR No.17 dated 14.03.2019 registered under Sections 302 and 34 IPC at Police Station Hajipur, District Hoshiarpur.

[2]. The FIR was lodged by Jaswinder Singh with the allegations that on 13.03.2019 at about 7:30 PM, he came to the house from his shop. When he reached in front of his house, then his brother Manjit Singh was standing in front of his gate. Dev Raj, Mandeep Singh and Nirmala Devi @ Nirmal Kaur (petitioner) were also standing in front of their own house and were arguing with the brother of the complainant. In the

meanwhile, all the three persons dragged the brother of the complainant and took him inside their house. When the complainant came forward to rescue his brother, then he saw that Mandeep Singh and Dev Raj caught hold hands of Manjit Singh and Nirmala Devi @ Nirmal Kaur (petitioner) was having spade in her hand. When the complainant and his wife Lakhwinder Kaur tried to step forward to get Manjit Singh freed, then accused had a scuffled with them. Petitioner caught Manjit Singh from his private parts and thereafter, the complainant party got Manjit Singh released from them. When they were taking Manjit Singh to their house, then Manjit Singh fell down in front of the gate of Dev Raj. On reaching home, Manjit Singh was found to be dead.

[3]. Learned counsel for the petitioner submitted that the petitioner is an old lady of 63 years of age and keeping in-different health. As per postmortem report, following injuries were found on the person of the deceased:-

“1. Bluish contusion 5cm x 4 cm present over the scrotal area. On dissection bluish colored hematoma present over whole of scrotum. On cut section of the testicular wall, about 28 ML of blood oozes out.

2. Seminal fluid present over the penis.”

[4]. The cause of death was kept in abeyance till receipt of chemical examiner's report. According to chemical examiner's

report dated 11.06.2019, no poison was detected in viscera of the deceased.

[5]. Learned counsel further submitted that no histopathological report was sought by the prosecution. Challan has already been filed qua husband and son of the petitioner and they have been granted regular bail by the High Court. Petitioner has not been proceeded against in terms of Sections 82 and 83 Cr.P.C so far. Prior to lockdown, arrest warrants of the petitioner were issued. During lockdown, no proclamation has been done so far. Now the petitioner is at the verge of being declared as proclaimed offender. As per medical opinion, injury No.1 has led to vasovagal shock, which is sufficient to cause death in normal course of nature.

[6]. Learned counsel further submitted that vasovagal shock may be due to trigger and distress. Petitioner did not use spade, even if, she was shown to be duly armed with it. It was quite unnatural that the petitioner being 63 years of age would catch hold private parts of the deceased in front of his husband and son. In the postmortem report, the cause of death was to be given after the receipt of chemical examiner's report. In the beginning, it was not the case of the prosecution that the injury in question in the absence of any such external injury, had anything to do with the death of the deceased. Postmortem was

conducted after a delay of 40 hours from the time of occurrence. The cause of death would remain debatable as the postmortem report was dependent upon the receipt of chemical examiner's report and no poison was detected in the contents of the organs sent for analysis. After the receipt of chemical examiner's report dated 11.06.2019, the cause of death in the instant case could not be ascertained. There was no other injury on the person of the deceased and Investigating Agency did not even call for histopathological report despite the fact that neither the postmortem report, nor the chemical examiner's report gave such an opinion with regard to cause of death. The Investigating Agency did not get biological tissues of the deceased tested by means of any scientific mechanism in order to have microscopic details of the injury, if any, on the private parts of the deceased.

[7]. In view of aforesaid latch on the part of the prosecution, Board of Doctors was constituted and vide opinion dated 29.07.2019, Board of Doctors observed that the cause of death was vasovagal shock due to injury No.1, which is sufficient to cause death in ordinary course of nature. The aforesaid opinion was given after about four and half months of the death of the deceased.

[8]. Learned counsel further submitted that the medical opinion on record does not clearly establish the exact cause of

death. In the absence of any such clear medical opinion, one of the essential elements of the culpable homicide under Section 299 IPC would remain debatable. As per medical opinion on record, cause of death is vasovagal shock due to injury No.1. There is no opinion that injury No.1 was sufficient to cause death as the same has created vasovagal shock. Vasovagal shock may be created due to trigger and other factors like distress.

[9]. Learned counsel relied upon **Criminal Appeal No.58 of 2007** titled **Rupinder Singh Sandhu Vs. State of Punjab and others** decided on 15.05.2018 and contended that in the aforesaid case, the Board of Doctors did not state that the death was the result of head injury or of cardiac condition or of head injury coupled with cardiac condition. Cardiac condition as reported by the Pathologist could also result in sudden cardiac death under stress. The deceased in that case could well have suddenly died without any external injury on account of neurogenic or vasovagal shock and the postmortem examination would not have revealed that fact. Only after the examination of pathologist, it was found that it was a case of sudden cardiac death.

[10]. On the basis of aforesaid precedent(s), learned counsel submitted that the medical opinion is not direct that injury No.1

has resulted in death, rather the opinion is that injury No.1 led to vasovagal shock and that may trigger or provide cause for death. In the absence of pathological report, no such opinion can be formed with regard to exact cause of death, particularly when the postmortem report and chemical examiner's report are silent about the direct cause of death. The medical opinion given by Board of Doctors would remain debatable in view of aforesaid legal proposition arising out of **Rupinder Singh Sandhu's case (supra)**, though the aforesaid case was decided on merits after conviction.

[11]. *Per contra*, learned State counsel opposed the bail on the ground that the medical opinion at this stage, is sufficient to *prima facie* prove the culpability of the petitioner.

[12]. Having heard learned counsel for the parties, I am of the *prima facie* opinion that the petitioner is an old lady of 63 years of age. Postmortem report and chemical examiner's report are silent about the direct cause of death. The cause of death as given by the Board of Doctors is vasovagal shock due to injury No.1. Whether vasovagal shock generated on account of injury No.1 was on account of trigger or by distress would remain debatable on the strength of quality of evidence to be led by the parties. Petitioner was shown armed with a spade. She did not inflict any injury with the spade, rather she caught hold

private parts of the deceased in front of her husband and son, who have already been granted regular bail by the High Court. Out of 16 prosecution witnesses, 2 witnesses have already been examined. Challan qua the husband and son of the petitioner has already been submitted.

[13]. At this stage, in my *prima facie* view, nothing is to be recovered from the petitioner. Petitioner is an old lady of 63 years of age and receiving treatment from Army Hospital and she has been advised surgery also. In post-COVID-19 period, arrest warrants of the petitioner were issued, but she has not been declared as proclaimed offender so far.

[14]. Looking to the aforesaid circumstances, I am of the view that the petitioner has made out a case for grant of anticipatory bail. The petition is allowed. Petitioner is directed to appear before the SHO/Investigating Officer to join investigation on 01.04.2021 and in the event of her arrest, she shall be released on anticipatory bail on her furnishing adequate bail bonds/surety bonds to the satisfaction of SHO/Investigating Agency subject to the following conditions as envisaged under Section 438(2) Cr.P.C:-

- i) that the petitioner shall make herself available for interrogation before the Investigating Officer as and when required;

- ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- iii) that the petitioner shall not leave the country, without prior permission of the Court and shall surrender her passport, if any.

23.03.2021

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No