

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

203

CRM-102-2021 in/and
CRM-M-42464-2020
Date of decision:09.02.2021

Sehanaz

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Rakesh Kumar Lathwal, Advocate for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

SUVIR SEHGAL J. (ORAL)

The Court has been convened through video conferencing due to Covid-19 pandemic.

CRM-102-2021

Prayer in the application is for preponement of the date of hearing of the main petition.

For the reasons given in the application, same is allowed.

Hearing in the main case is preponed to today and is taken on Board.

Main case.

Petitioner has filed this petition under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.528, dated 10.11.2019 registered under Sections 323, 452, 506, 34 of the Indian Penal Code, 1860 (Sections 302, 201 of IPC were added later on) at Police Station Sonipat Sadar, District Sonipat (Haryana).

As per the version of the prosecution, on 08.11.2019, as a result of an altercation over a petty issue with his neighbour, Ankush, who is the husband of the petitioner, got so infuriated that he picked up a hand pump iron pipe and hit the complainant's mother, Mehtab on the head with it. The petitioner and Tejbir also came on the spot soon after and held the complainant as Ankush hit him also. Mehtab was taken to a private hospital and expired on 23.11.2019, that is, 15 days after the incident due to cardiac arrest. The petitioner was arrested on 03.12.2019.

Counsel representing the petitioner has argued that FIR was initially registered on 10.11.2019 under Sections 323, 324 and 506 IPC. However, upon death of Mehtab, the investigating agency added offence under Section 302 IPC and other provisions. Counsel submits that insofar as the petitioner is concerned, there is no allegation against her of inflicting any injury upon the deceased. The sole role attributed to the petitioner, who came on the spot later, is that she caught hold of the complainant while Ankush struck him with the iron pipe. He urges that there is a delay of two days in registration of the FIR and the death of Mehtab is not on account of the incident. He submits that the trial is

under way and the statement of the complainant and other material witnesses has been recorded. Counsel asserts that the petitioner is a 45 years old housewife and her three minor children are with her in the jail premises. He submits that the petitioner has undergone custody period of more than 1 year and 2 months and she deserves to be enlarged on bail.

Per contra, learned State counsel, upon instructions from SI Naresh has opposed the petition though he was not in a position to dispute the fact that there is no allegation against the petitioner of causing any injury upon the deceased. Upon instructions, he submits that the challan was presented on 13.12.2020, charge was framed on 12.01.2021 and five out of 18 prosecution witnesses including the complainant have been examined.

I have considered the rival submissions of the parties.

In order to ascertain the factual position regarding the detention of the minor children with the petitioner, this Court called upon the State vide order dated 21.12.2020 to verify the position. In compliance thereof, status report by way of affidavit of Deputy Superintendent of Police, Sonipat, has been filed, wherein it has been deposed as under:-

“5. That as far as the reason for the said children in the jail with petitioner is concerned, in this regard, it is submitted that in this regard, petitioner also made her statement to the effect that presently, she is confined in District Jail, Karnal and her three children namely Anshul (5 years), Mannat (4 years) and Ashiya (3 years) are also with her in

the said jail. She further stated that in this case, all her family members i.e. her husband, parents in law and in some other case, her brother in law (Dewar) is also confined in jail and in this manner, all her family members are lodged in jail and there is no body in the family to look-after her children outside. None of their relatives are also not ready to keep her children and as such, she is keeping her children with her in the jail. She further narrated that her children are being maintained in the jail very well and all kinds of facilities are being provided to them including special diet. She further stated that now her children are growing up and they need to go to school and as such, she wants to send her children to Shardhanand Ashram, Karnal, so that they can get education. In this regard, her statement has also been recorded, which is annexed herewith as Annexure-R2.”

All the three children are below five years of age. They need the care and attention of their mother. More importantly, it is not conducive for their overall mental and physical development if they spend their growing years in the confines of a prison, where they will constantly remain in touch with under-trials and convicts.

Facts, as argued, show that no inflicted injury has been attributed to the petitioner and she arrived at the place of occurrence after her husband had hit Mehtab, deceased, with an iron pipe. In such a scenario, the complicity of the petitioner in the crime is debatable.

Keeping in view the above facts and circumstances, interest of three minor children, period of incarceration of the petitioner, nature of

allegation, gravity of offence and the fact that the trial is likely to take time to conclude, no purpose would be served by keeping the petitioner behind the bars any further.

Without commenting anything on the merits of the case, the petition is allowed and the petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

09.02.2021

pooja saini

(SUVIR SEHGAL)

JUDGE

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No