

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.9595 of 2021
Reserved on 06.12.2021
Pronounced on 01/02/2022

Ruksar @ Ruksar Begam ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ramneek Vasudeva, Advocate for the petitioner.
Mr. Sidakmeet Singh Sandhu, AAG, Punjab.
Ms. Rakhi Sharma, *Amicus Curiae*

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
153	30.11.2019	Nangal, District Rupnagar	302 IPC (Section 201 IPC added subsequently.

1. The petitioner, incarcerated since Dec 3, 2019, upon her arrest in the FIR captioned above, has come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. Para 27 of the bail application declares that the petitioner has no criminal history.

2 (a) The brief facts of the case are that the police recorded statement of complainant-Shaukat Ali under Section 154 Cr.P.C . in which he stated that his brother-Rasid Mohammad, who works as a labourer, was living separately with his wife Ruksaar (the petitioner). They have a 8 years old daughter, who is living with her maternal grandparents at Kalka. Rashid Mohammad used to consume liquor. On this account there were misunderstanding between him and his wife. On 29.11.2019, Rasid (his brother) had reached home after consuming liquor and then both husband and wife had entered into an altercation. The complainant did not intervene because it was usual thing and their personal matter. In the morning around 8:30 A.M., Ruksaar-the petitioner contacted one of her brother-in-laws and stated that her husband was not waking up at home. After that they had reached their home. They noticed that Rasid Mohammad was lying on the floor with injury on his head from which blood was oozing out. They also noticed that his face had been cleaned; blood soaked clothes were lying nearby and floor had also been washed. However, they could notice the drops of blood on the floor. Based on this, the police registered an FIR as mentioned above.

2(b) As per post-mortem examination, the cause of death was ante mortem injuries

which were sufficient to cause death in normal course of nature. The police found the involvement of the petitioner and she was arrested. Later on, it was revealed that she had inflicted blows twice on the head of her husband with '*Ghotna*'. The police also recorded disclosure statement of the petitioner and recovered the clothes, which were placed on the roof after washing.

3. Ld. Counsel for the petitioner contends that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. The contention on behalf of the State is that the offence is heinous in nature as the accusation is of murdering her husband, and despite being a woman, the petitioner is not entitled to bail.

5. Ms Rakhi Sharma Ld. Amicus argued that although the legislature has kept the bail provisions lenient for women, such leniency is not blanket and the question of granting or refusing bail would vary from case to case depending upon a cumulative assessment of evidence and other factors.

REASONING:

6. As per paragraph 15 of the bail petition, the accused has a nine-year-old daughter, who is currently residing with her maternal grandparents, who are running in old age. The complainant's family has not ever volunteered to take her with them and raise her.

7. The brother of the deceased in his statement under Section 154 Cr.P.C. stated that the deceased was an alcoholic and on this account, husband and wife would always enter into an altercation. He further specifically stated that on the night of the incident also, they heard altercations from their house but did not intervene because of their personal and usual matter. The weapon of the offence allegedly used by the petitioner was not a specific weapon but an article which is used in kitchen on routine basis. Thus given the relationship between husband and wife and the weapon being normal kitchen article creates a possibility of the occurrence having taken place in heat of passion. Furthermore in Para No.15 of the petition, it has been mentioned that maternal grandparents of the daughter of the petitioner are unable to take care of her because of their old age and on the other hand no one from paternal relations are coming forward to take her along.

8. In Gurbaksh Singh Sibbia v State of Punjab, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has

failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In State of Rajasthan v Balchand, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In GudikantiNarasimhulu v Public Prosecutor, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In Prahlad Singh Bhati v NCT, Delhi, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In Dataram Singh v State of Uttar Pradesh, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

9. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

10. The petitioner is a first offender and thus deserves an opportunity to course correct.

11 Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

12. Given above, the petitioner shall be released on bail in the FIR mentioned above, subject to furnishing a personal bond of Rs. Ten thousand (INR 10,000/-) and shall furnish one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned Court/ Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any nearest Ilaqa

Magistrate/duty Magistrate. Before accepting the sureties, the concerned Court must satisfy that if the accused fails to appear in Court, then such surety is capable of producing the petitioner before the Court.

13. In Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, this Court observed,

[53]. The pragmatic approach is that while granting bail with sureties, the "Court" and the "Arresting Officer" should give a choice to the accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

14. Given above, the petitioner in the alternative may furnish a personal bond of Rs. Ten Thousand only (INR 10,000/-), and hand over to the concerned court a fixed deposit(s) for Rs. Ten Thousand only (INR 10,000/-), made in favour of Chief Judicial Magistrate of the concerned district. Said fixed deposit may be made from any of the banks where the stake of the State is more than 50%, or any of the well-established and stable private banks, with the clause of automatic renewal of the principal and the interest reverting to the linked account.

15. The fixed deposit need not necessarily be made from the applicant's account. If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned court. If made online, its printout, countersigned by the accused, shall be given; and the depositor shall get the online liquidation disabled. The applicant shall inform the concerned branch of the bank at the earliest that it has been tendered as surety. Such information be sent either by e-mail or by post/courier about the fixed deposit, whether made on paper or in any other mode, along with its number and FIR number. After that, the applicant shall hand over such proof and endorsement to the concerned police station. Such court shall have a lien over the deposit until the case's closure, or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, as the case may be. Subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes, if any, shall be endorsed/returned to the depositor.

16. It shall be the total discretion of the applicant to choose between surety bonds and fixed deposits. It shall also be open for the applicant to apply to the investigator or the concerned court to substitute fixed deposit with surety bonds and vice-versa.

17. On the reverse page of personal bonds, the attesting officer shall mention the permanent address of the petitioner along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station

and the concerned Court.

18. The petitioner to also execute a bond for attendance in the concerned Court(s), as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.

19. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

20. Given the nature of allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within 10 days from today and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case.

21. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

22. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

23. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

24. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

25. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

01-02-2022
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Whether speaking/reasoned: Yes
Whether reportable: No