

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12510-2022
Reserved on: 21.04.2022
Pronounced on: 11.05.2022

Nisha
...Petitioner(s)
Versus
State of Haryana
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Amitabh Tewari, Advocate
for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
91	19.3.2019	Sadar Jhajjar, Jhajjar	302 IPC

1. The petitioner, incarcerated upon her arrest in the FIR captioned above, came up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. In paragraph 19 of the bail petition, the accused declares that she has no criminal antecedents.
3. On 19.3.2019, one Inder Singh informed the police that Anil of his village has been killed inside his house by 3-4 unknown persons, upon which the police reached at the spot, where Mohit, nephew of the deceased moved complaint. In his complaint, he stated that at about 9/9-30 p.m., he had talked with his uncle on phone and thereafter, he went to sleep. At 12-00 mid night, Sanjeev, son of his uncle Anil, came to his house and told that his father has been killed by 3/4

persons in his house. On reaching there, they noticed that his uncle is dead and had injuries over his face and head. His aunt Nisha, the petitioner herein i.e. wife of the deceased, was present there and she revealed that 3-4 boys, who had muffled their faces had entered their house and killed her husband with sharp edged weapons and at that time, since there was no electricity in the house, as such, she could not recognize them. They also pushed her, because of which, she fell down and the assailants ran away. Based on this, the police recorded FIR captioned above. During the course of investigation, the police recorded statement of Naresh Devi, sister of the deceased, wherein she stated that the petitioner Nisha had told her that her husband had come under the influence of liquor and as such, a quarrel took place between them and she committed his murder. Based on this extra-judicial confession, the police arrested the petitioner and conducted investigation and launched prosecution against her by filing report under Section 173 CrPC.

4. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

5. Ld. counsel representing the State opposes bail on the ground that the allegation against the petitioner is serious. Moreover, the trial has reached at an advance stage and statement of spot witnesses stand recorded.

REASONING:

6. PW-8 Prince aged 15 years, who is son of the petitioner and the deceased, did not support the case of the prosecution. He has specifically denied that on the date of incident, his father came to house under the influence of liquor and started quarrelling with his mother and that he also took a rod in his hand, which his mother snatched from him and pushed the deceased, due to which, he fell down. He has also denied his statement under Section 154 CrPC that his mother had given an axe blow on the head of his father, due to which, blood oozed out from the body.

7. Anish, aged 14 years, the other child of the petitioner and the deceased, also did not support the case of the prosecution. He has also stated in the same terms that of his elder brother Prince. He denied that any such fight took place

between his parents.

8. PW-3 Naresh Devi, sister of the deceased, to whom extra-judicial confession was made, stated that the petitioner Nisha had told her that deceased Anil, her brother and husband of the petitioner, came home under the influence of liquor and a quarrel took place between them. Petitioner Nisha had further told her that she committed the murder of Anil with the help of her mother Mukhtyari and two other persons of the her village. In her cross-examination, she supported the case of the prosecution.

9. The contention of learned counsel for the petitioner that there was no reason for the petitioner to make any extra-judicial confession before her sister-in-law i.e. the sister of the deceased, cannot be appreciated at this stage.

10. Undoubtedly, the dead body of the deceased was found in his house and at that time, only his wife and two sons were present. The explanation offered by them was found to be incorrect by the police.

11. In the bail petition, the petitioner is not taking the plea under Exceptions (1) and (2) of Section 300 IPC. Her case is based on total denial and there is no explanation for presence of dead body in the house under Section 106 of the Indian Evidence Act. In case the petitioner wanted to take benefit of right to private defence, sudden provocation and sudden quarrel, then such fact was within her knowledge, because the scene of crime was her house, and as such, under Section 106 of the Indian Evidence Act, she owes an explanation. The Bail petition is absolutely silent about this fact.

12. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for bail at this stage. However, it shall be open for the petitioner to file new bail application(s) in changed circumstances or after recording the statements of witnesses other than official and formal witnesses, whichever is earlier, if so advised. If the statements mentioned above are not recorded within six months, the petitioner may file a fresh bail petition on the grounds of prolonged custody. The dismissal of this petition shall not come in the way while considering the fresh petition(s).

13. 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.

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

(ANOOP CHITKARA)
JUDGE

May 11, 2022
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.