

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

203

CRM-M-22399-2021

Date of decision : 14.01.2022

MAMTA SHARMA ALIAS BITTI

..... Petitioner

VERSUS

STATE OF PUNJAB

..... Respondent

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. Hitesh Chopra, Advocate and
Mr. B. K. Mehta, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. S. K. Chaudhary, Advocate
for the complainant.

(Through video conferencing)

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed for the grant of anticipatory bail to the petitioner in FIR No.40 dated 21.05.2021 registered under Section 306 IPC at Police Station Behrampur, District Gurdaspur.

The co-ordinate Bench of this Court had passed the following order on 19.07.2021:-

“The case has been taken up for hearing through video-conferencing.

Petitioner seeks grant of anticipatory bail under Section 438 Cr.P.C in case bearing FIR No.40 dated 21.05.2021 registered under Section 306 IPC at Police Station Behrampur, District Gurdaspur.

FIR was registered on the statement of Smt. Sudesh Kumari with the allegations that her husband Raj Kumar was working as Raj

Mistri. About 13 years ago, her husband was working in the house of Ashok Kumar and since then, he had developed some relationship with the wife of Ashok Kumar i.e. petitioner. On 20.05.2021, the complainant was present in her house. A mobile call came from the phone of her husband on the mobile of her son that he was in the house of the petitioner and they should take him from there. When the complainant and her son Rahul went to the house of the petitioner, then they found that her husband was lying at the roof of the house and he handed over one suicide note written by him. At that time, the condition of her husband was bad. After arranging some vehicle, the complainant brought her husband to the hospital and doctor declared him dead. The complainant has alleged that her husband has died due to the harassment caused by the petitioner and he consumed some poisonous substance.

As per alleged suicide note, the deceased has mentioned that he fell in love with the petitioner and developed physical relations. Petitioner became pregnant on four occasions, but she got herself aborted. Due to this, her uterus was impaired and was removed. Both of them had solemnized marriage in a temple. Thereafter, the petitioner developed relations with some other person and started threatening the deceased that she would get him killed from one Jolly. She also took Rs.65,000/- from the deceased at the time of marriage of her daughter. She also took Rs.5000/- when her leg was broken and an amount of Rs.5000/- at the time of her operation. During last 13 years, she took hefty amount from the deceased.

Learned counsel for the petitioner submitted that as per chemical examiner's report, the cause of death is intake of Aluminium Phosphide, which has been detected in Exs.III and IV. Phosphine is a constitute of Aluminium Phosphide, which has been detected in Exs.I, II and V. No poison has been detected in the contents of Ex.VI. With reference to Chemical Examiner's report, learned counsel further submitted that Aluminium Phosphide poisoning cannot be administered by deceit as it emanates highly pungent smell as per published medical works. Learned counsel further refers to Jaipal Vs. State of Haryana, 2002(4) RCR (Criminal) 486 and Anita Vs. State of Haryana, 2010(3) RCR (Criminal) 112 (DB) to contend that Aluminium Phosphide (celphos) is available in the form of chalky white tablets used as pesticide and rodenticide. When these tablets are taken out of the sealed container, they come in contact with atmoshperic moisture and chemical reaction takes place, liberating phosphine gas. According to the published works on the subject, Aluminium Phosphide is not homicidal as it cannot be

taken accidentally as it emanates highly pungent smell, which may drive out all inmates from house if left open and the same cannot be taken accidentally. The veracity of the suicide note is still to be gone into by the prosecution. Learned counsel further submits that in order to constitute an offence under Section 306 IPC, there has to be a concerted effort on behalf of the accused to compel the victim upto the last stage i.e, the stage at which the victim has no option, but to commit suicide.

Learned State counsel, however, opposed the bail on the premise that the deceased was living in the company of the petitioner for the last many years and he died an unnatural death while in the house of the petitioner.

Looking to the aforesaid facts and circumstances of the case, the complicity of the petitioner would remain debatable.

Till the next date of hearing as one time arrangement, petitioner is directed to appear before the SHO/Investigating Officer to join investigation on 27.07.2021 at 11.00 a.m. and in the event of her arrest, she shall be enlarged on interim bail, subject to her furnishing requisite bail bonds/surety bonds to the satisfaction of Arresting Officer. However, petitioner shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

Nothing expressed hereinabove shall be construed to be an opinion on the merits of the case. The case shall be decided on the merits on the adjourned date.

Adjourned to 04.10.2021.”

Learned State counsel submits that the petitioner has already joined the investigation, and has cooperated and is not required any further, at this stage.

Learned counsel for the complainant submits that the allegations alleged against the petitioner are such that she should not be extended the concession of anticipatory bail.

The question before this Court at this stage is whether to keep the petitioner behind the bars during the period of trial or not. This Court is not adjudging the innocence or the guilt of the petitioner at this stage, which will be done on the basis of the evidence which will come on record during

the trial. Once, the Investigating Agency has stated before this Court that the petitioner is not required any further for custodial interrogation, the prayer of the petitioner for the grant of anticipatory bail is accepted and the order passed by the co-ordinate Bench dated 19.07.2021 granting interim bail to the petitioner is made absolute.

However, the petitioner shall abide by the conditions stipulated under Section 438(2) Cr.P.C. She shall also join investigation as and when called upon to do so.

In case at any given point of time hereinafter, it is felt by the Investigating Agency that petitioner is required for the investigation but is not co-operating, it will be at liberty to approach this Court for passing appropriate orders.

The petition stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

14.01.2022
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Whether speaking/reasoned	Yes
Whether Reportable :	No