

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

CRM-M-19465-2020

Date of decision : 03.02.2022

Gurdip Kaur

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Brijeshwar Singh Bhalla, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

RAJESH BHARDWAJ, J. (ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.27 dated 10.03.2020, under Section 306 IPC, registered at Police Station Bullowal, District Hoshiarpur.

As per the factual matrix of the case, the FIR was lodged by Lal Chand son of Lashkar Ram. It has been alleged that he has three boys and a daughter, who was married with Madan Lal, about four years back. His son-in-law, Madan Lal had gone to Dubai for the last two years and the daughter was blessed with a son named Jashan, aged about 3 years. Amandeep Kaur was residing in India at her matrimonial home with her mother-in-law i.e. Gurjit Kaur. His daughter was being harassed by her mother-in-law Gurjit

Kaur so, he kept his daughter and son-in-law with him for the last about 1 ½ years. However, from the last six months, she was residing in her matrimonial home in Village Chakkowal Shekan. On 9th March, 2020 at about 11:00 AM, his daughter informed him telephonically that her mother-in-law Gurjit Kaur quarreled with her and she asked her father to take her to her parental home, however, he refused. Later on, the Mediator of the marriage informed him telephonically that Amandeep Kaur has consumed some poisonous substance and had also administered the same to the minor child Jashan. He reached IV Hospital Hoshiarpur and found the minor son Jashan already dead and his daughter Amandeep Kaur being serious was referred to Jalandhar ESCORT Heart Hospital. It was alleged that his daughter had consumed poison due to the maltreatment caused by her mother-in-law, due to which, the minor son had already died. The request was made to take legal action against the culprits. It is also transpired from the facts that Amandeep Kaur later on died on 13th March, 2020. The investigation commenced and petitioner was arrested on 11th March, 2020. The petitioner approached the learned Additional Sessions Judge, Hoshiarpur for grant of bail under Section 439 Cr.P.C., who after hearing counsel for the parties, declined the same vide his order dated 2nd June, 2020. Aggrieved by the same, the petitioner approached this Court for grant of bail by way of filing the present petition.

It has been vehemently contended by learned counsel for the petitioner that the petitioner has been falsely implicated in this FIR only because she happened to be the mother-in-law of the deceased. He submitted that it is evident from the allegations made that the husband of the

petitioner was in Dubai at the relevant time and the marriage had taken place about four years prior to the occurrence. He submits that there is no dispute as alleged by the complainant in the FIR and the same was lodged after due deliberations and with a *malafide* intention. He has submitted that the petitioner is an old lady and has no concern with the allegations as alleged in the FIR. To buttress his arguments, he has submitted that author of the FIR Lal Chand is father of the deceased who has now been examined as PW-1 by the trial Court. He has placed on record the testimony of the complainant which would show that the complainant has not supported the case of the prosecution and hence, on the request of learned APP, he was declared hostile. On persual of the same, it would reveal that he has deposed before the trial Court that neither he received any telephonic call from his daughter on 9th March, 2020 at 11:00 AM nor she disclosed anything to him. He has further deposed that accused Gurdip Kaur had no hand in the death of his daughter Amandeep Kaur and grandson Jashanpreet Singh. He submits that the petitioner is behind the bars for the last about two years and as the material witness has also not supported the case of the prosecution, further incarceration of the petitioner is unwarranted and she deserves to be enlarged on bail.

Learned State counsel has opposed the submissions made by counsel for the petitioner. She has submitted that the case of the prosecution is based on the dying declaration. She submits that the occurrence in question took place on 9th March, 2020 whereas, the deceased Amandeep Kaur succumbed to the poisonous substance four days thereafter i.e. on 13th March, 2020. She submits that her statement under Section 164 Cr.P.C.

was recorded by the Judicial Magistrate wherein, she had categorically levelled the allegations of her harassment and beatings caused by the petitioner. She submits that on account of the same, the deceased committed suicide along with her minor son. She has further submitted that even if the complainant has turned hostile, the case of the prosecution rest on the dying declaration which needs no corroboration. However, she candidly acknowledges that the complainant has not supported the case of the prosecution. She further submits that in all, there are 20 prosecution witnesses, out of which, 02 witnesses including the complainant have been examined.

I have heard learned counsel for the parties and perused the records.

There is no gainsaying that the present case rests on the dying declaration. The statement of the deceased was recorded under Section 164 Cr.P.C. and the same has been treated as a dying declaration. However, the complainant is none other than the father of the deceased who is the author of the FIR and had levelled various allegations against the petitioner. Admittedly, the husband of the deceased is not named in the FIR who is already working in Dubai. Though the statement recorded under Section 164 Cr.P.C. is being considered to be dying declaration but the fact of the matter is that the petitioner is being prosecuted for the offence under Section 306 IPC and not under Section 302 IPC. This Court would refrain from commenting anything on the merits of the case as the same is to be evaluated by the trial Court on the basis of the evidence produced before it on the conclusion of the trial. Petitioner is behind the bars since 11th March,

2020 and the material witness i.e. complainant already stands examined who has not supported the case of the prosecution. In the overall facts and circumstances of the case, it is apparent that the trial of the case will take sufficient time and no useful purpose will be served by keeping the petitioner in custody for such a long time. Keeping in view the abovesaid facts, this Court finds that learned counsel for the petitioner has succeeded in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on her furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

03.02.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No