

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

CRM-M No.26036 of 2022 (O&M)

Date of decision: 6th September, 2022

Kamlesh Adya

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Kashish Aggarwal and Mr. Saurav Kanojia, Advocates
for the petitioner.

Mr. Inderpreet S. Kang, Asst. Advocate General, Punjab
for the respondent/State.

Mr. A.K. Kalsy and Mr. Abhimanyu Kalsy, Advocates
for the complainant.

MANJARI NEHRU KAUL, J.

CRM No.33005 of 2022

In the light of averments made in the application and in the
interest of justice, the same is allowed and the statement of complainant
Vipan Kumar Dhir (Annexure P-15) is taken on record.

CRM-M No.26036 of 2022

This is second petition by the petitioner under Section 439
Cr.P.C. in case bearing FIR No.219 dated 02.10.2017 under Sections
302, 304-B and 120-B IPC registered at Police Station Division No.4,
Police Commissionerate Ludhiana.

On a pointed query put to the learned senior counsel as to what were the material changes in circumstances subsequent to the withdrawal of the previous petition under Section 439 Cr.P.C. on 31.01.2021, he submits that the complainant, who is the father of the deceased Ritu, stands examined before the trial Court.

Learned senior counsel contends that the petitioner who is a 66 years old lady, has been in custody since 07.10.2021, after the concession of anticipatory bail granted to her by this Court vide order dated 28.01.2021 (Annexure P-5) was set aside by the Hon'ble Supreme Court vide order dated 04.10.2021 in SLP (CRL.) Nos.5404-5405 of 2021 (Annexure P-6) and was directed to surrender before the trial Court within a period of one week.

Learned senior counsel, while drawing the attention of this Court to the allegations levelled in the FIR in question (Annexure P-1) against the accused including the petitioner, who is the mother-in-law of the deceased, submits that a totally false and fabricated version has been brought forth therein. He contends that the allegations levelled in the FIR need to be appreciated in the light of the fact that though the complainant as well as the accused were residents of the same city i.e. Ludhiana and the deceased was working as a Lecturer and attending her college regularly, however no untoward incident, much less by way of any whisper qua the alleged mental and physical harassment for getting insufficient dowry was either reported by the deceased herself to any of her colleagues or the police or even by the complainant to any of the

authorities concerned. He further submits that the complainant, being a retired District Attorney, would not have chosen to sit quiet in case of such alleged continuous harassment meted out to his deceased daughter; even no panchayat was ever attempted to be convened by the complainant party qua the alleged torture which on the face of it does not come across as being normal in the circumstances.

Learned senior counsel still further has vehemently argued that the story weaved out by the complainant that the deceased had been physically tortured and forcibly administered poison, is belied from the record inasmuch as when the deceased was admitted in the hospital by co-accused Gaurav (husband of the deceased) and Daksh (brother in law of deceased), she was gasping for breath and was immediately put on ventilator. The complainant, on being informed by the accused party, reached the hospital and at that time the deceased was already being managed by the doctors. Thus, in this background, there could be no occasion for the deceased to have told the complainant about the forcible administration of poison to her. Still further, he has argued that the allegations of the complainant party that there were injury marks on the body of the deceased, are falsified by the medical evidence on record inasmuch as no injury marks were found on her person at the time of her admission in the hospital. Furthermore, the alleged injury/injuries found on the person of the deceased during her post mortem were in fact the result of insertions given by the attending doctors during her medical treatment, which in turn finds due corroboration from the post-mortem

report which does not reveal any ante-mortem injuries on her body. Learned senior counsel further submits that since similarly situated co-accused i.e. Praveen Adya, Gaurav and Daksh have been extended the concession of bail coupled with the fact that the complainant who is the sole material witness, stands examined, the petitioner be also extended the concession of bail because the trial shall take considerable time to conclude as 29 prosecution witnesses remain to be examined.

Per contra, learned State counsel assisted by the learned counsel for the complainant, has vehemently opposed the prayer and submissions made by the counsel opposite and submitted that there were specific allegations levelled against the petitioner and her family members of subjecting the deceased to continuous mental and physical harassment, who died within a few months of her marriage, which fact was reiterated by the complainant while stepping into the witness box as PW-1. It has also been argued that the petitioner had absconded after the registration of the FIR in question and was declared a proclaimed person. The concession of anticipatory bail, which had been extended to her by this Court vide order dated 28.01.2021, was then set aside by the Hon'ble Supreme Court on 04.10.2021 with the directions to her to surrender before the trial Court. It was also submitted that at the time of alleged occurrence, the petitioner was present in her house and hence, it could be clearly discerned that she would have actively participated in the crime in question.

Learned counsel representing the complainant has strongly disputed the submissions made by the learned senior counsel for the petitioner that the petitioner's case was at par with that of the other accused, who had since been extended concession of bail. He has urged that the complainant while getting the FIR registered had categorically stated therein that the petitioner would ill-treat the deceased and make her work like a servant. It was also argued that when the complainant and his wife reached the hospital on being informed about their daughter's admission in the hospital, the deceased revealed to them about her having been forcibly poisoned by her in-laws' family. A prayer was made by learned counsel for the complainant that in the wake of serious allegations and the petitioner's conduct i.e. of having absconded for a period of about two years, she did not deserve the concession of bail.

I have heard learned counsel for the parties and perused the relevant material on record.

No doubt, the petitioner was indeed declared a proclaimed person and thereafter, the concession of anticipatory bail granted to her by this Court vide order dated 28.01.2021, was set aside by the Hon'ble Supreme Court on 04.10.2021 with the directions to her to surrender before the trial Court within a week thereafter. Admittedly, the petitioner in compliance of the orders and directions of the Hon'ble Apex Court, appeared before the trial Court and surrendered, though soon thereafter, she was hospitalized on account of her ill-health. The

complainant, who is a material witness in the case in hand, stands examined and 29 prosecution witnesses remain to be examined. The allegations levelled against the petitioner are similar to that of her co-accused, who have since been extended the concession of bail by this Court vide different orders. The trial is unlikely to conclude in the near future. Since the petitioner is a 66 years old lady and has been in custody since 07.10.2021, this Court deems it fit to extend the concession of bail to her as her further incarceration would serve no useful purpose.

In the aforementioned facts and circumstances, the instant petition is allowed and the petitioner is admitted to bail to the satisfaction of the trial Court/Duty Magistrate. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

September 6, 2022

rps

Whether speaking/reasoned	Yes/No
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Whether reportable	Yes/No
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