

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28529-2022
Reserved on: 05-09-2022
Pronounced on: 12-09-2022

Gurjeet Kaur ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gaurav Sharma, Advocate for the petitioner.

Mr. Jashandeep Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
79	15.08.2021	Sandaur, District Malerkotla	302/34 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 (Cr.P.C.) seeking bail.
2. In paragraph 13 of the bail petition, the accused declares that she has no criminal antecedents.
3. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. Ld. counsel representing the State opposes bail.

REASONING:

5. Paragraphs 2 & 3 of the status report mention the prosecution's case and it reads as follows:

"2. That the brief facts of the case are that on 15.08.2021 complainant Avtar Singh @ Sonu s/o Ujjagar Singh r/o village Dhano gave statement to the police that he is residing with his parents. The house of Bikkar Singh s/o Sagar Singh is situated in front of his house in the street. Said Bikkar Singh used to park tank in the street which are meant for cleaning sewerage with the result they face difficulty for crossing in the street. On 14.08.2021 at about 8.00 PM his father Ujjagar Singh who is aged about 70 years told said Bikkar Singh not to park the

tank in the street. Then Bikkar Singh became angry and he along with his wife Gurvinder Kaur and his sister-in-law Gurjeet Kaur (petitioner) w/o Pirthi Singh abused them by standing in front of his house. They informed Amarjit Kaur Sarpanch of the village about this occurrence and the Sarpanch asked Bikkar Singh to come in the panchayat. On this Bikkar Singh became more angry. Today at about 8.45 AM Bikkar Singh along with his wife, sister-in-law (bharjai) abused his father. His father and mother came out in the street then Gurvinder Kaur gave spade (Fourha) blow on the forehead of his mother. But the people pacified both the parties from fighting.

3. *That the complainant Avtar Singh further stated that at about 9.45 AM his father was going in the street on foot to attend Mangna ceremony of his nephew Gurwinder Singh @ Happy. When he reached at main road, then Bikkar Singh, his wife Gurvinder Kaur, his bharjai Gurjit Kaur (petitioner) and Sema Khan friend of Bikkar Singh wrongly restrained his father and they started beating his father by giving fist and kick blows. They threw his father on the ground and gave fist and kick blows to his father. His father raised noise. He (complainant) and his uncle Amarjit Singh reached at the spot. Then all the accused ran away from the spot. Due to beatings, his father became unconscious. He was taking to his father to Civil Hospital, Malerkotla for treatment but his father died on the way. The doctor declared his father as dead. He deposited the dead body of his father in the mortuary in the hospital. On this statement, FIR No.79 dated 15.08.2021 u/s 302/34 IPC has been registered in P.S. Sandaur against the petitioner and above mentioned other accused."*

6. The allegations specifically stated that the deceased's death was caused by the fist and leg blows given by the petitioner and other co accused. However, if reference is made to the relevant post-mortem report Annexure P-2, these allegations are not substantiated; as according to the report, there was no injury anywhere on the dead body. Even as per the CTL report, no poison was detected. In paragraph 4 of the status report/reply, it has been explicitly stated that no injury was found on the body.

7. Strangely, the Sessions Court had dismissed the petitioner's bail on the reasons mentioned in para 7 of the order dated, which is reproduced as under,

"After hearing arguments, it is observed that present case has been registered upon the statement of complainant Avtar Singh on the grounds that his mother has been given beatings. Although, the post-mortem report does not depict any injury upon the person of deceased, but serious allegations have been raised in the present case. Therefore, I do not deem this case fit where the applicant is

entitled to regular bail, as the case is, yet, at the initial stage. Therefore, present regular bail application filed on behalf of the applicant stands dismissed being devoid of merits.”

8. Given the absence of injuries and absence of certain opinion linking the petitioner’s actions to the cause of death, the accused’s custody is an overall travesty.

9. 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 Gudikanti Narasimhulu 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.

10. 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.

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, provided the accused is not required in any other case, 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/-). Considering the opinion in the post-mortem report, to insist on furnishing surety bonds would be an insult to injury, and thus, there would be no need to furnish surety bonds.

13. 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.

14. 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. The bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

15. 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.

16. 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.

17. The SHO of the concerned police station or the investigating officer shall arrange to send a copy of this order, preferably a soft copy, to the complainant/aggrieved, within seven days. If the aggrieved notices any violation of this order, they may inform the SHO of the concerned police station, the trial court, or even this court.

18. *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. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

Sep 12, 2022
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: **YES**