

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.33930 of 2022
Reserved on: 01.09.2022
Date of decision: 05.09.2022

VISHNU

...Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Amit Choudhary, Advocate
for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

Mr. Himanshu Jain, Advocate
for respondent No.2.

JAISHREE THAKUR, J.

1. This is the second petition that has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner herein in criminal case No.0012 dated 02/04.07.2016, CIS No.COMI/51/2/2016, titled as *Tota Ram versus Vishnu and others*, registered under Sections 304-B, 498-A, 406, 506 and 120-B of the IPC, at Police Post Jayakava, Police Station Hodal, Haryana.

2. In brief, the facts as culled out are that a complaint case was filed by the father of deceased Manisha against the petitioner herein and his parents on the allegations that the petitioner and his parents used to harass and beat his daughter on account of bringing insufficient dowry. It is stated

in the said complaint that the petitioner and his parents had put kerosene on Manisha and set her on fire. She died on 11.03.2016 while undergoing treatment in Ram Manohar Lohia Hospital, Delhi and at that point of time, she was three months' pregnant. Prior thereto, from 06.03.2016 to 07.03.2016, she remained hospitalized in Guru Nanak Hospital, Palwal.

3. The petitioner herein had initially approached this Court by way of filing CRM-M-24452-2021 and after arguing for some time, learned counsel for the petitioner therein sought to withdraw the bail petition. Thereafter, after a gap of one year, this second bail application for grant of anticipatory bail to the petitioner herein has been filed seeking a plea that when the first bail application had been filed, it could not be brought to the notice of this Court that deceased Manisha had given her dying statement on 09.03.2016 (Annexure P-6) before the Executive Magistrate, Chanakya Puri, Delhi while she was admitted at Ram Manohar Lohia Hospital, Delhi that the burn injuries that she had suffered, were accidental in nature.

4. Learned counsel for the petitioner herein would argue that in the complaint that has been filed, there is no averment of the abovesaid statement as recorded by the Executive Magistrate, Chanakya Puri, Delhi and it is only now that the petitioner has been made aware of the abovesaid statement given by deceased Manisha regarding the incident in question. He would rely upon the statement of deceased Manisha dated 09.03.2016 (Annexure P-6) in support of his argument. He would also rely upon the judgments rendered by the Supreme Court in **Rani Dudeja versus State of Haryana, 2017(13) SCC 555**, by Kerala High Court in **Aneesh versus State of Kerala, 2014(3) R.C.R. (Criminal) 454** and by Gauhati High Court in

Runu Roy versus State of Assam, 2005(17) R.C.R. (Criminal) 602, to argue that in case first bail application is dismissed as withdrawn, the second bail application for anticipatory bail would be maintainable in view of changed circumstances and there is no bar for the second bail application to be filed at a subsequent stage.

5. Pursuant to notice of motion having been issued on 03.08.2022, status report by way of an affidavit of Sh. Sajjan Singh, HPS, Deputy Superintendent of Police, Hodal, District Palwal on behalf of State of Haryana dated 30.08.2022 has been filed in Court and the same is taken on record. Appearance has also been caused by the counsel on behalf of the complainant, who would submit that it is only after the preliminary evidence has been recorded in the complaint case that the petitioner herein has been summoned. It is also argued that deceased Manisha used to be tortured by the petitioner herein on account of inadequate dowry and the Panchayat had to be convened to settle the dispute herein. It is argued that deceased Manisha was pregnant at the relevant time, when she was subjected to torture by the petitioner and his parents. It is also argued by learned counsel for the complainant that after Manisha had suffered burn injuries, the petitioner herein took her to Palwal hospital instead of Hodal hospital, which was at a farther distance, ensuring that timely treatment be not given to her. Apart from the aforesaid facts, it is brought to the notice of this Court that the petitioner herein has been summoned on several occasions and to the extent that non-bailable warrants have been issued against him by the Court, but still he has not put in an appearance therein and is evading his arrest.

6. Learned State counsel would contend that on account of non-appearance of the petitioner despite being summoned, non-bailable warrants had been issued against the petitioner as far back as on 04.10.2021, but the petitioner has managed to evade the service and his arrest and has now approached this Court by way of filing the second bail application for grant of anticipatory bail and the concession of bail be not given to the petitioner as non-bailable warrants have been issued against him by the Court.

7. I have heard learned counsel for the parties and have also perused the pleadings of the case as well as case laws cited.

8. I find that this is the second bail application that has been filed by the petitioner herein after his first bail application was dismissed as withdrawn as not being pressed vide order dated 30.06.2021 as learned counsel for the petitioner, at that relevant time, had argued the matter and then sought to withdraw the matter as not pressed.

9. The plea that the petitioner herein was unaware of the dying statement having been made by deceased Manisha to the Executive Magistrate, Chanakya Puri, Delhi on 09.03.2016 regarding the accident having taken place and not blaming any one, was not to his knowledge, cannot be accepted at the present stage. The judgments as relied upon by learned counsel for the petitioner hereinabove would not be applicable as the first bail application of the petitioner herein was dismissed as withdrawn as not pressed after the same was argued.

10. Learned counsel for the petitioner herein would argue that deceased Manisha had given her dying statement before the Executive Magistrate, Chanakya Puri, Delhi on 09.03.2016, in which she had

exonerated the petitioner and his family members of any wrong doing, however, this very statement was under consideration in the earlier petition i.e. CRM-M-24452-2021 and as this Court was not inclined to grant the concession of anticipatory bail to the petitioner, the petition was dismissed as withdrawn, being not pressed.

11. It is also worthwhile to note that the petitioner herein has not put in an appearance before the summoning Court, Hodal, District Palwal despite several opportunities having been allowed to him and in this regard, non-bailable warrants have been issued against him and he is evading his arrest.

12. Consequently, learned counsel for the petitioner has not been able to point out any change in circumstances in the instant petition and also in view of the fact that non-bailable warrants have been issued against the petitioner herein, the instant petition is dismissed.

05.09.2022
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*