

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

CRM-M-42618-2022

Date of decision : 16.09.2022

Rajbala

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. S.K. Garg Narwana, Senior Advocate assisted by
 Mr. Sanjay Jain, Advocate
 for the petitioner.

Mr. Sumit Jain, Addl. Advocate General, Haryana
for the respondent/State.

Mr. A.P.S. Deol, Senior Advocate assisted by
Mr. H.S. Deol, Advocate
for the complainant.

PANKAJ JAIN, J. (ORAL)

Apprehending her arrest in FIR No.287 dated 21st of August, 2022, registered for offences punishable under Sections 302, 120-B, 34 of the Indian Penal Code, 1860 (Section 328 IPC added later on) at Police Station Kasola, District Rewari, Punjab, the petitioner has preferred this petition under Section 438 Cr.P.C. seeking pre-arrest bail.

2. The incident relates to unnatural death of Bhagwan Singh, who died of poisoning. Ld. Senior Counsel representing the petitioner submits that it is a case where the FIR has been lodged after much delay i.e. after more than 5½ months. The deceased was in prolonged

and protracted litigation with his family including his wife, who as per him was living in adultery. Brother, who moved application for Post-Mortem of the deceased was also in *lis* with the deceased so much so an FIR No.669 of 2021 was got registered by the said brother against the deceased for offences punishable under Sections 420, 120-B IPC at Police Station Gurgaon Sadar. He has further relied upon **Gurbaksh Singh Sibbia vs. State of Punjab, 1980(2) SCC 565** to submit that at this stage there is a presumption of innocence in favour of the petitioner.

3. Mr. Sumit Jain, Addl. Advocate General, Haryana appearing for the State and Mr. Deol appearing for the complainant on the other hand submit that it is a case wherein the deceased was admittedly under influence of the petitioner. He was a man of means and was admittedly crippled owing to his illness as he was suffering from cancer and that too of advance stage. Further there are monetary transactions in which the deceased has transferred huge amounts of money in favour of the petitioner. Deceased even went on to execute Will in favour of the petitioner to the exclusion of all of his family members. Thus, in view of the fact that the deceased died of unnatural death while living with and under influence of the petitioner allegations need to be investigated and custodial interrogation of the petitioner will be necessary. He submits that there are n number of questions that are still unanswered. Keeping in view the state of deceased he was not in position to procure poison on his own. Accused is the only

one who had access to him. Further the petitioner is the only one who is set to gain out of death of the deceased. He further submits that grant of bail would amount to stalling the investigation.

4. I have heard Ld. Counsel for the parties and have gone through the records of the case.

5. Admittedly, the deceased died of Aluminum phosphide (sulphas) poisoning i.e. he died an unnatural death. He was living with the petitioner obviously the petitioner would have been the first to report the matter to the police but she did not. However, it was only brother of the deceased who initiated proceedings and filed application seeking medical examination of the dead body. As per settled law petitioner is required to make out a case for invoking jurisdiction under Section 438 Cr.P.C. In **Gurbaksh Singh Sibbia's** case (supra), Apex Court has held that :-

“..That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations

which the court has to keep in mind while deciding an
application for anticipatory bail....”

Likewise while reiterating the law laid down in **Gurbaksh
Singh Sibbia's case (supra)** Apex Court in **Sushila Aggarwal and others
Vs. State (NCT of Delhi) and another, 2020 (5) SCC 1** held that:-

*“(4) Courts ought to be generally guided by considerations
such as the nature and gravity of the offences, the role
attributed to the applicant, and the facts of the case, while
considering whether to grant anticipatory bail, or refuse it. “*

6. As per settled law (in **C.B.I vs. Anil Sharma, 1997(7)
187**) there is a qualitative difference between custodial interrogation
and questioning a person insulated by pre-arrest bail. Investigation at
this nascent stage cannot be belayed.

7. The nature and the seriousness of the allegations levelled
against the petitioner and her conduct are the relevant factors for the
adjudication of the present petition.

8. In view of the aforesaid circumstances, this does not
appear to be a fit case to grant discretionary relief of anticipatory bail
to the petitioner. Consequently, the same is dismissed.

9. Needless to say nothing recorded hereinabove should be
construed as expression on merits of the case.

September 16, 2022

Dpr

**(PANKAJ JAIN)
JUDGE**

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