

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49641-2021
Date of decision: 12.01.2022

Sukhjeet Kaur @ Charanjeet Kaur
...Petitioner
Versus
State of Punjab
...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Parminder Singh-I, Advocate
for the petitioner.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

Mr. P.S. Sekhon, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
32	12.03.2021	Nathana, District Bathinda	302, 34 IPC

1. Petitioner, the daughter-in-law of the deceased who allegedly shared common intention with her husband and allegedly committed her murder, is in custody for more than 7 months in the FIR captioned above, has come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. In Para 16 of the bail petition, the petitioner declares having no criminal history.
3. A brief narration of allegations relevant in deciding the present petition is that the FIR captioned above was registered at the instance of Piara Singh who is brother of the deceased. He had stated that his sister was married to Karnail Singh around 50 years back. She had four children, eldest of them being

Surjeet Singh @ Seeta, who is the main accused of murder. On 11.03.2021 at about 3-00 P.M., the complainant came to the house of his sister and found that the main gate was bolted from outside. He called from outside, but no one responded. After unbolting the gate when he entered inside, he noticed that one person was lying covered in a blanket on a cot. On his calling, the said person did not respond. Subsequently, on removing the blanket, he saw that it was his sister HarbhajanKaur who had received head injury and her clothes were stained with blood. The complainant further alleged that after the death of one of the sons of the deceased, the land in his share which was around two *killas* was entered in the name of his sister HarbhajanKaur by way of inheritance. However, Surjeet Singh, husband of the petitioner, kept on pressurising his mother to transfer the land in his name, so that he could sell it. Due to that reason, there was a dispute in the family. The complainant alleged that he suspects that the son of the deceased namely Surjeet Singh in connivance with his wife, who is petitioner herein, has murdered his sister. Based on these allegations, FIR captioned above, was registered. On further inquiry, the police arrested the petitioner-accused and her husband for commission the murder.

4. Learned counsel for the petitioner has argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and her family. While referring to Will (Annexure P-5), he has argued that in fact, the deceased had already made the Will of her property in favour of grandson i.e. son of accused Surjeet Singh and there was neither any occasion for Surjeet Singh to commit the murder of his mother nor for his wife (petitioner) to share common intention, as the property had already been willed to her son. He has further argued that the present case is based on circumstantial evidence and there is no evidence at all to connect the petitioner with the said offence. Only one injury was noticed which is attributable to one person. He has further argued that although the legal burden was upon them to explain the cause of death but such legal burden can be discharged when intention and motive is established in the investigation, which is missing.

5. Learned State counsel has opposed the bail petition on the ground that it is a murder case and there is serious allegation against the petitioner.

6. Learned counsel for the complainant has also opposed the bail application

on the ground that the husband of the petitioner wanted to sell the property of the deceased and for that reason, he committed her murder and the petitioner also shared common intention with him. He has further argued that relatives of the accused are forcing the complainant party to enter into a compromise.

REASONING:

7. The petitioner is a woman and she has been arraigned with the help of Section 34 IPC. The investigation does not point out that she had inflicted the blow on the head of the deceased. There is no allegation against the petitioner that behavior or treatment given by the petitioner to the deceased was cruel or disrespectful at any point of time. The only allegation against her is the motive of her husband. There is also no weight behind the argument of learned counsel for the complainant that the complainant party is being forced to enter into a compromise with petitioner, as the petitioner is in custody and she cannot be blamed for such attempts by the relatives of her husband.

8. Without going into the merit of the argument whether Surjeet Singh could have committed the murder of his mother or not, the evidence against the petitioner is not enough to deny bail to her at this stage. She is already in custody for more than 7 months and has suffered sufficient incarceration. She has been arrayed as an accused with the aid of Section 34 IPC. While granting bail, this Court is going to impose strict conditions asking the petitioner not to contact any of the witnesses during the course of trial. Moreover, the statement of the complainant Piara Singh has already been recorded on 11.11.2021 and his cross-examination was also completed on 05.12.2021. Statement of PW-2 also stands recorded. Thus, the contention raised on behalf of the complainant cannot be considered a factor for denying bail to the petitioner.

9. It is relevant to mention here that the argument of learned counsel for the petitioner that Surjeet Singh, husband of the petitioner, had no motive to murder his mother, is not being considered while granting bail to the petitioner. Thus, Surjeet Singh would not be entitled to claim parity of bail with the petitioner.

10. During the trial's pendency, if the petitioner repeats this offence or commits any offence under NDPS Act, Arms Act, or where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, then State should consider applying for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court

seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the Cr.P.C.

11. 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 @ PappuYadav, 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 GudikantiNarasimhulu 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.

12. 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 SushilaAggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

13. 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.

14. 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/-), and shall furnish one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned Court/Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any nearest Illaqa Magistrate/Duty Magistrate. Before accepting the sureties, the concerned Court must satisfy that in case the petitioner-accused fails to appear in Court, then such sureties are capable to produce the petitioner-accused before the Court, keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

15. The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.

16. 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.

17. 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.

18. 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.

19. Till the completion of the trial, the petitioner shall not contact, call, text, message, remark, stare, stalk, make any gestures or express any unusual or inappropriate, verbal or otherwise objectionable behavior towards the victim and victim's family, either physically, or through phone call or any other social media, through any other mode, nor shall unnecessarily roam around the victim's home.

20. Given the nature of allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within 10 days from today and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case.

21. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

22. In case the petitioner finds the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

23. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

24. In case the Investigator/Officer-In-Charge of the concerned Police Station

arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

25. 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.

26. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

27. This bail is subject to the petitioner joining investigation and fully cooperating with the investigating agencies. Failure to do so shall *ipso facto* result in its withdrawal.

28. *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 in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

January 12, 2022
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