

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

229 (2 cases)

CRM-M-2833-2023 (O&M)

Date of Decision: 24.02.2023

Shubam

...Petitioner

Versus

State of Punjab

...Respondent

AND

CRM-M-235-2023 (O&M)

Brahm Parkash Alias Bittu Bajaj

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sarbuland Singh Mann, Advocate with
Mr. Karanjeet Singh Brar, Advocate for the petitioners
(in both cases)

Mr. Amish Sharma, AAG, Punjab
(assisted by ASI Bhajan Dass)

Mr. A.D.S Jattana, Advocate for the complainant

JAGMOHAN BANSAL, J. (ORAL)

1. By this common order, CRM-M-2833-2023 and CRM-M-235-2023 are disposed of because both are arising from the same FIR. For the sake of convenience, facts are borrowed from CRM-M-2833-2023.

2. Through instant petition under Section 438 of Code of Criminal Code, 1973, the petitioner is seeking anticipatory bail in FIR No.100 dated 29.8.2022, under Section 304-B of IPC, registered at Police Station Arniwala, District Fazilka.

3. The case of the prosecution as per FIR is that Ritik Gumber approached police authorities and tendered his statement averring that they are three sibling. The eldest sister was Sajia whose marriage was solemnized with Shubham Bajaj in the month of June' 2018. After one year of marriage, a son was born out of this wedlock who died six months back. At the time of marriage, they had given sufficient dowry articles along with one i10 car. The husband and other family members used to harass her for bringing less dowry and used to give her beating. On 28.08.2022, at about 01:55 PM, he received a telephonic call from his brother-in-law that they should take away Sajia from his house or she will be turned to death. Thereafter, he tried to contact his sister on mobile phone but the same was switched off. Thereafter, he along with relatives went to matrimonial house of his sister where he came to know that his sister was admitted at Mehrok Hospital, Arniwala. They reached there and found his sister admitted. Smell of salfas tablets was coming out from mouth of his sister who disclosed him that her husband and other family members have given beatings to her and forcibly administered salfas tablet. Her sister was shifted to Delhi Heart Hospital where she died.

4. Learned counsel for the petitioner, *inter alia* contends that the complainant in the FIR alleged that the petitioner and other family members had administered poison to the deceased whereas in the application filed before this Court, the complainant is alleging that her sister consumed poison because she was harassed by the petitioner and other family members. The complainant has diametrically changed his stand because CCTV footage of house of the petitioner as well as hospital was telling a totally different story. It is petitioner and his family members who took away deceased to hospital. She was taken away to hospital on Aactiva. All the family members persuaded her to go to hospital and thereafter, got her admitted in the hospital. As per CCTV footage of the hospital, the police came to the hospital and recorded statement of the deceased. The complainant and other family members were present in the hospital and deceased did not make allegation against the petitioner and other family members. The deceased was depressed on account of death of her sole son who had died about six months back. The petitioner is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Fazilka. The petitioner has deep roots in the society. There is no possibility of flee from justice

5. The petitioner was granted concession of interim bail vide order dated 19.01.2023 passed by this Court.

6. Reply by way of affidavit dated 24.02.2023 of Atul Soni, Deputy Superintendent of Police, Sub-Division, Jalalabad filed by respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

7. As per State's reply, the Investigating Officer has thoroughly examined CCTV footage and found that family members of the deceased are trying to persuade the deceased to go to hospital for treatment while she was refusing to do. No ill-treatment seems to have been given by her in-laws at that point of time. The statements of neighbours/eye-witnesses were also recorded and as per their statements, they came to the spot after hearing noise and observed that family of the deceased had brought her to street and was trying to persuade to go to hospital on their Activa. The witnesses have further categorically stated that they have never seen that deceased was met with ill-treatment by in-laws.

8. Learned State counsel, on instructions from ASI Bhajan Dass, confirmed that petitioner has joined investigation, however, petitioner may be directed to appear before Investigating Officer as and when required.

9. Learned counsel for the complainant submits that it is a case of suicide within 7 years from the date of marriage, thus, petitioner does not deserve concession of anticipatory bail. The State affidavit's is factually incorrect because State has commented upon state of mind of

the deceased without any concrete evidence. The Investigating Officer could not consider CCTV footage at this stage.

10. I have heard the arguments of learned counsel for the parties and perused the record.

11. Intent of arrest and reason of denial of bail is to:

- i) Secure the appearance of the accused at the time of trial;
- ii) allay possibility of repeating of offence & jeopardising own life on account of grim prospect of being convicted; and
- iii) Avoid possibility of tampering of evidence and security of witnesses who may be pressurised or maltreated.

12. A person who seeks to be liberated must take judgment and serve sentence in the event of his conviction. The nature of the crime charged, severity of punishment prescribed, *prime facie* available evidences, history & background of the accused may indicate that any amount of bond and surety is not going to secure presence of accused, at the time of conviction. Detention or arrest not only deprives a person from his fundamental right of personal liberty guaranteed by Article 21 but also freedom guaranteed by Article 19(1) of our Constitution.

13. The complainant in the FIR has alleged that poisonous substance was poured in the mouth of the deceased by husband and other family members, however, complainant before this Court is claiming that deceased consumed poison due to ill-treatment by petitioner and his family members. In the FIR, the father-in-law of the deceased is also named even though admittedly he was not at home at the time of alleged incident. There is no evidence of complaint by deceased or parents of the deceased at any point of time prior to registration of FIR even though marriage was solemnized in June' 2018. As per complainant, he received call at about 01:55 PM on 28.08.2022 from his brother-in-law who informed him that they should take away Sajia from his house or she will be turned to death. As per CCTV footage, the deceased had already consumed poison by that point of time and petitioner as well as his family members were taking away her to hospital. The deceased was admitted in hospital after 02:00 PM on 28.08.2022 and she took her last breath in the morning of 29.08.2022. When the police visited hospital, parents of the deceased were present in the hospital. The deceased did not make statement against the petitioner and his family members either to the police or doctors or other para-medical staff.

The contention of the complainant that CCTV footage cannot be considered at this stage seems to be totally contrary to principles of criminal jurisprudence and fundamental right of life and liberty of the petitioner. As per complainant, petitioner and other family

members should be put behind the bars irrespective of their fault just because one lady has committed suicide at her matrimonial home within 7 years of marriage. The Investigation Agency is duty bound to look into all the *prima facie* evidence before forming an opinion. It is settled proposition of law that police is bound to register FIR in case of cognizable offence, however, it would be contrary to Articles 14, 19 and 21 of the Constitution of India as well Constitutional Bench judgments including judgments ***Gurbaksh Singh Sibbia and Others Versus State of Punjab; (1980) 2 SCC 565*** and ***Sushila Agarwal Versus State (NCT of Delhi) and Another; 2020 (5) SCC 1***, to form an opinion that persons named in FIR should be arrested as soon as FIR is registered against them.

14. The object of arrest is to prevent the accused from destruction of evidence, flee from justice, cause damage to witnesses and to allay possibility of causing injury to himself where there is possibility of conviction. The State counsel and counsel for private respondent have failed to point out any possibility of flee from justice on the part of the petitioner or to destroy evidence or manipulate documents on record, rather it is a case where complainant wants that documentary evidence i.e. CCTV footage should be ignored.

15. In view afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The interim bail granted to the petitioner vide order

dated 19.01.2023 is made absolute subject to the conditions envisaged under Section 438(2) of Cr.P.C.

16. If the petitioner or his family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted by this order.

17. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

18. The complainant is at liberty to supply all documentary or oral evidences to the Investigating Officer in support his version.

Pending misc. application(s) also stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

24.02.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>