

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-5264-2023

Reserved on: 04.09.2023

Pronounced on: 11.09.2023

Shilpa @ Shilpi

. . . . Petitioner

Vs.

State of Haryana

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Vimal Kumar Gupta, Advocate, for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 439 Cr.PC is for grant of regular bail to the petitioner in case FIR No.28 dated 16.02.2009 registered at Police Station Sector 14, Panchkula under Sections 365 IPC (Sections 302/ 379B/ 404/120B IPC added later on).

2. (i) FIR was lodged on the complaint of Smt. Sushma Mittal on 16.02.2009, as per which her husband Vinod Mittal, who used to work in finance and property, was dealing with Raju and his wife Shilpa (present petitioner), residing in AKS Colony, Ashiana Apartment, Zirakpur. An SX4 car had been sold by Vinod Mittal to Raju, for which payment was being made by Raju in installments. On 14.02.2009, husband of the complainant along with her son Yashan Mittal, aged 4 years, had gone in his Santro Car to the house of Raju to recover the amount, but they did not return for quite some time. Complainant contacted her husband on his mobile at about 10.15 p.m. The call was taken by her husband and she

(complainant) heard the sounds of abuses and somebody saying '*maro maro*'. Complainant further heard shrieks of her husband but could not communicate with him. Later on, she repeatedly tried to call her husband, but the call was not taken. She along with her neighbor and her brother-in-law Mukesh Mittal went to the house of the petitioner, where husband of the petitioner Raju was not found. Petitioner Shilpa was present, who informed that husband of the complainant had come there at about 9.00 p.m., but had left on not finding Raju. Complainant then went to police officials but on making enquiries from the petitioner, she did not give any satisfactory reply. Complainant then came to the Salon being run by Raju in Baltana, where cousin brother of Raju disclosed that someone had parked Raju's car outside the salon a little while ago and had asked him to take care of the car. Missing report regarding the husband and son of the complainant was lodged. It was stated by the complainant that she had come to know that her husband and son had been kidnapped by Raju and his other companions. FIR No.28 dated 16.02.2009 under Section 365 IPC was registered.

(ii) During investigation, it was found that husband of the petitioner in connivance with co-accused Mobin Khan @ Chotu, Sonu Sain, Ashok Kumar @ Vicky and Sanjay were involved in the missing of the husband and son of the complainant. Said co-accused Mobin Khan @ Chotu, Sonu Sain and Ashok Kumar @ Vicky were arrested. It was revealed by all of them that as per the plan made by Raju, the husband of the petitioner, i.e., Vinod Mittal and his son Yashan had been abducted and that Vinod Mittal was murdered with a knife and that his dead body along with Yashan were thrown in a canal flowing in the mid-way of Rajpura at

Patiala. Yashan was thrown alive. Sections 302/201/216/120B IPC were added. Santro car used in the incident was recovered from the possession of co-accused. Blood samples were collected from the said car, which matched with the DNA of Sh. Ved Prakash, father of the deceased husband of the complainant. Hair samples of the co-accused were taken, which were also found to have matched with the hair sample collected from the recovered vehicle. Despite all possible efforts, Raju and his wife-petitioner could not be arrested, as they were found to have absconded. Challan against the other co-accused was filed.

(iii) Police report further reveals that petitioner and her husband Raju had been absconding from the last 13 years. They were declared proclaimed offender by Id. JMIC, Panchkula on 09.12.2009. Even reward of ₹50,000/- each was announced in order to arrest them. On secret information, Police came to know that petitioner and her husband were residing in Madhya Pradesh by changing their names and identity. They were arrested on 16.07.2022 after a long period of 13 years. Their disclosure statements were recorded and based thereon, Sections 379B and 404 IPC were also added. Gold *kada*, ring and a purse containing cash besides some cards taken from the body of the deceased Vinod Mittal after his death, were also recovered from Raju. It was confessed by him that Yashan Mittal was thrown alive in the canal along with the dead body of the deceased Vinod Mittal. It was further disclosed that petitioner Shilpa in connivance with her husband had chalked out the plan so as to wipe out Vinod Mittal and had further suggested her husband to kill the minor child Yashan Mittal, otherwise he would give evidence against the petitioner and her husband Raju.

3. It is submitted by ld. counsel on behalf of the petitioner that co-accused Sanjay, Ashok Kumar @ Vicky and Sonu Sain were convicted by the Court of ld. ASJ, Panchkula on 08.05.2010, but separate criminal appeals filed by these co-accused were allowed by a Division Bench of this Court on 11.11.2016, thus acquitting said co-accused Ashok Kumar@ Vicky, Sonu Sain and Sanjay. It is contended further that petitioner has no role to play in the crime. As per the allegations in the FIR, when complainant came to the house of the petitioner, she was present there, though her husband was not available. It is contended that on the next date i.e., 15.02.2009, Raju took his wife i.e., petitioner along with minor daughter and mother-in-law to Vadodara (Gujarat). Being wife, petitioner accompanied her husband without having any knowledge regarding any incident. She also gave birth to another daughter and presently, she is having two minor daughters. Ld. counsel contends further that husband of the petitioner is also in custody and that her two minor daughters are presently living with the parents of the petitioner, who are suffering from various ailments and not in a position to take care of them. Ld. counsel contends that trial may take long time to conclude and that in all these circumstances, petitioner be allowed regular bail.

4. Strongly opposing the bail petition, ld. State counsel submits that petitioner along with her husband were absconding for the last 13 years and were declared proclaimed offender. They were arrested with a great difficulty and in case petitioner is released on bail, she may again abscond and trial may not conclude. Ld. State counsel has further drawn attention towards concluding part of the judgment dated 11.11.2016 passed by the Division Bench of this Court, whereby co-accused Ashok Kumar @ Vicky,

Sonu Sain and Sanjay were acquitted, so as to contend that “*nothing stated or observed in the said judgment is to be taken as an expression of opinion on merits of the case against absconding accused Raju and Shilpa*”. Ld. State counsel submits that in view of the said clear observations, petitioner cannot be allowed to take benefit out of the acquittal of the co-accused. Ld. State counsel further submits that petitioner was part of conspiracy with her husband and it is at her suggestion that Yashan Mittal, a child of just 4 years of age, was thrown alive in the canal. Ld. State counsel has prayed for dismissal of the petition.

5. I have considered submissions of both sides and have appraised the record.

6. Though the petitioner is in custody since 19.07.2022 in the present case, as per the custody certificate placed on record by the respondent/State, but Court cannot ignore the fact that she along with her husband i.e., co-accused Raju kept concealing themselves for more than 13 years and had to be declared proclaimed offender. The complainant i.e., wife of deceased Vinod Mittal had visited the house of petitioner on the night of 14.02.2009 itself, where the petitioner could not give satisfactory reply about her husband, who was found absent even from his saloon, so petitioner cannot be believed at this stage that she was not aware about any incident and left for Vadodara (Gujarat) with her husband just on his asking on 15.02.2009.

7. I agree with the contentions of ld. State counsel that in case petitioner is allowed bail, she may again abscond and trial may not come to an end. Role of the petitioner is yet to be established during trial on the basis of evidence to be led by the prosecution. Petitioner cannot be allowed

to take benefit of the judgment qua the co-accused, whereby, they have been acquitted by the Division Bench of this Court, as it has been clearly stated in the judgment dated 11.11.2016 that nothing observed therein is to be taken as an expression of opinion on the merits of the case against absconding accused-Raju and Shilpa.

8. Having regard to all the above facts and circumstances, but without commenting anything on the merits of the case, this Court finds the present case to be unfit for grant of regular bail.

Dismissed.

(DEEPAK GUPTA)
JUDGE

11.09.2023

Vivek

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No