

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

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CRM-M-9142-2023

Date of Decision: 11.05.2023

Mohinder Kaur**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. S.S. Sidhu, Advocate for the petitioner

Mr. Shiva Khurmi, AAG, Punjab

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') is seeking concession of regular bail in FIR No.129 dated 20.09.2022 under Sections 306 & 34 of Indian Penal Code, 1860 (for short '**IPC**') registered at Police Station Raman, District Bathinda.

2. The case of prosecution is that complainant lodged a complaint alleging that his sister Jagjit Kaur got married with Fatehpal Singh about 15 years back. His sister had got 3 Acres of land from her *Bua Saas* (sister of father of husband of the deceased). Fatehpal Singh sold her parental house for a sum of Rs.9 Lacs as he was constructing a new house in his agricultural land. He wanted to sell the agricultural land of her sister which was opposed by her. Fatehpal Singh and his mother started physically assaulting her. On 19.09.2022, he went to meet his sister Jagjit Kaur at her village where she told him that Fatehpal had

earlier sold her house at a very cheap price and now he wants to sell her agricultural land. Fatehpal is pressurizing as well as assaulting her. She is fed-up with the mal-treatment and would commit suicide. He spoke with Fatehpal but he told him that he wanted to build a new house and needs money. He (Fateh) asked him to tell his sister to sell the agricultural land and hand over the money to him otherwise, he would maltreat her. On 20.09.2022, he received a phone call on his mobile from Fatehpal informing the death of his sister.

3. Mr. S.S. Sidhu, learned counsel for the petitioner *inter alia* contends that 3 Acres of land mentioned in the FIR was owned by son of the petitioner and he had transferred the same to the deceased. It is factually incorrect that land was transferred by *Bua Saas* in favour of the deceased. There was no parental house of the deceased which son of the petitioner had sold. These facts collectively prove that entire FIR is false and fabricated. The marriage of the deceased was solemnized with son of the petitioner about 15 years back and they are having 14 years old son. The petitioner is a 70 years old lady. There are no specific allegations against the petitioner except one line to implicate her. The petitioner is in custody since 21.09.2022. There is no suicide note.

4. Custody Certificate dated 02.05.2023 filed by respondent-State is already taken on record. As per custody certificate, the petitioner is in custody since 22.09.2022 and she is not involved in any other offence.

5. Reply by way of affidavit dated 10.05.2023 of Butta Singh Gill, P.P.S., Deputy Superintendent of Police, Sub-Division, Talwandi Sabo, District Bathinda filed on behalf of respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

6. As per aforesaid reply, 3 acres of land was transferred in the name of deceased by her husband, thus, allegation of complainant that it was transferred by *Bua Saas* of the deceased in her name is *prima facie* incorrect.

7. Learned State counsel submits that police report has already been filed, however, charges are yet to be framed. He further submits that there are 18 prosecution witnesses.

8. Proviso to clause (i) & (ii) of sub-section (1) of Section 437 Cr.P.C. provides that the court may release on bail if a person accused of commission of offence punishable with death or imprisonment for life is 'under the age of sixteen years or is a woman or is sick or infirm'.

9. While adverting with bail to a woman, a two judge bench of Hon'ble Supreme Court in ***Satender Kumar Antil v. CBI; (2022) 10 SCC 51*** has observed:

"69. Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the accused person is sick or infirm. In a case pertaining

to women, the court is expected to show some sensitivity. We have already taken note of the fact that many women who commit cognizable offences are poor and illiterate. In many cases, upon being young they have children to take care of, and there are many instances when the children are to live in prisons. The statistics would show that more than 1000 children are living in prisons along with their mothers. This is an aspect that the courts are expected to take note of as it would not only involve the interest of the accused, but also the children who are not expected to get exposed to the prisons. There is a grave danger of their being inherited not only with poverty but with crime as well.”

10. In the case in hand, the petitioner is in custody since 22.09.2022 and she is not involved in any other offence. Police report under Section 173 of Cr.P.C. stands filed; charges are yet to be framed and there are 18 prosecution witnesses, thus, petitioner cannot be kept in custody for indefinite period. The Trial Court yet has to return definite findings on the disputed issues, thus, there is abysmally low possibility of conclusion of trial in near future. As prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody. The prosecution has not led any convincing/plausible documentary or oral evidence indicating

possibility of petitioner being flee from justice or tampering the evidences or winning over/threatening the witnesses.

11. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaqa/Duty Magistrate concerned.

12. 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.

(JAGMOHAN BANSAL)
JUDGE

11.05.2023
Mohit Kumar

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