

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

210

CRM-M-13705-2022 (O&M)
Date of Decision: 09.03.2023

Bala Devi**...Petitioner**

Versus

State of Haryana**...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Manoj Kumar Pundir, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

Mr. R.S. Mamli, Advocate for the complainant

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking regular bail in FIR No.388 dated 31.12.2020 under Sections 120-B, 302, 34 of Indian Penal Code, 1860 (for short 'IPC') (Section 302 IPC was deleted and Section 306 of IPC was added later on), registered at Police Station Krishna Gate, District Kurukshetra.

2. The case of the prosecution is that Investigating Officer on 31.12.2020 received an information regarding committing of suicide by a lady. The police party reached on the spot and met with mother of deceased and recorded her statement wherein she stated that her elder daughter, aged about 25 years, performed love marriage with Sheetal Kumar about 7 years back and out of the said wedlock one son was born. Sheetal went abroad about 2 months back and her daughter was residing

in a rented accommodation at Kurukshetra. The mother-in-law of her daughter used to quarrel with her. Her daughter went to S.P., Kurukshetra and moved a complaint against her mother-in-law and came to her matrimonial home for taking her son. She picked her son from her matrimonial home and kept him at her parental home. Thereafter, she went to her matrimonial home to collect her clothes, however, she committed suicide there.

3. Learned counsel for the petitioner, *inter alia* contends that complainant and her all family members i.e. husband, husband of her sister are involved in serious offences i.e. prostitution and NDPS. The marriage of the deceased was solemnized with son of the petitioner about 8 years back and it was love marriage. They were staying separate from the petitioner in a rented accommodation. The petitioner is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. There is no possibility of flee from justice.

4. Custody certificate dated 07.03.2023 is taken on record. Registry is directed to tag the same at appropriate place. As per custody certificate, the petitioner is in custody since 27.12.2021 and she is not involved in any other offence.

5. Learned State counsel submits that police report has already been filed and charges stand framed. She further submits that out of 22 witnesses, 3 have already been examined which includes the complainant. The petitioner is involved in the commission of grave

offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

6. 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’.

7. 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.”

8. In the case in hand, the petitioner is in custody since 27.12.2021 and she is not involved in any other case. Though this Court is not supposed to comment upon the antecedents of complainant and her family members, however, it seems inevitable to notice that complainant and her family members are involved in multiple cases and they have already remained in custody or at present are in custody. The petitioner is not involved in any other offence and she is a 50 years old lady. There are 22 prosecution witnesses and till date only 3 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. the complainant stands examined. 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.

9. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to 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.

10. 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.

09.03.2023

Mohit Kumar

(JAGMOHAN BANSAL)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No