

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

220

CRM-M-26739-2023

Date of Decision: 31.05.2023

Rattan Kaur

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Anuj Dewan, Advocate for the petitioner

Mr. A.P.S Tung, DAG, Punjab

Mr. Gaurav Partap S. Pathania, Advocate for complainant

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 regular bail in FIR No.60 dated 29.04.2023 under Sections 498A, 406, 308, 328 & 120-B of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Division No.2, District Pathankot.

2. The case of the prosecution is that complainant lodged a complaint alleging that her marriage was solemnized with Kharak Singh about 3 years back. They are blessed with a daughter. Her husband is in the habit of consuming intoxicants and after consuming intoxicants he used to beat her without any reason. Her parents have already passed away. She is having one younger brother and one younger sister aged 11 years. Her in-laws family i.e. mother-in-law, husband, father-in-law, brother-in-law used to harass her on account of demand of dowry. Her

sister-in-law tried to set her on fire. Her daughter is suffering from breathing problem. Her husband is not looking after medical expenses of her daughter rather in April' 2022, they attempted to administer her poison.

3. Learned counsel for the petitioner, *inter alia* contends that complainant is parentless and is having two younger siblings. She wants that her husband should stay at her parental home. Kharak Singh has denied to accompany the complainant to her parental house which is cause of dispute. The petitioner is bearing medical expenses of their daughter. The complainant is having no income thus, she, in any case, cannot bear cost of medical expenses of their child. The complainant left her matrimonial home on 16.08.2021, thus, there was no question of administering poison in the month of April' 2022. No recovery is to be effected from the petitioner. The petitioner is in custody since 29.04.2023 and she 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 Pathankot. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 30.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 01.05.2023 and she is not involved in any other offence.

5. Mr. Gaurav Partap Singh Pathania, Advocate appeared and filed his Memorandum of Apperance on behalf of the complainant. The

same is taken on record. Registry is directed to tag at an appropriate place.

6. Learned State Counsel and learned counsel for the complainant submits that police report is yet to be presented. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

7. 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’.

8. 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.”

9. The petitioner is in custody since 01.05.2023 and she is not involved in any other offence. The petitioner is mother-in-law of the complainant and she is 55 years old lady. Nothing is to be recovered from her. There is *prima facie* substance in the contention of the petitioner. As the 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.

10. 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/Illaq/Duty Magistrate concerned.

11. 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.

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

31.05.2023
Mohit Kumar

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