

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

212

Criminal Misc. No. M-31717 of 2023

Date of decision :-22.09.2023

Inderjit Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Harshmir Kaur Swaitch, Advocate
for the petitioner.

Mr. Kunwarbir Singh, AAG, Punjab.

NIDHI GUPTA J. (Oral)

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner during pendency of the trial in case FIR No.71 dated 21.7.2022, under Sections 498-A, 406, 34 IPC (subsequently Section 304-B IPC was added), registered at Police Station Bhadson, District Patiala.

The FIR was registered on the statement of the deceased/complainant, which read as under :-

“Statement of Mandeep Kaur aged 22 years wife of Inderjit Singh village Kalsana Police Station Bhadson District Patiala mobile Number 62848-65154. Stated that, I am a resident of above

address and is doing the house hold work. My marriage was solemnized with Inderjit Singh son of Avtar Singh resident of Village Kalsana Tehsil Nabha District Patiala as per Sikh rites at about 1-1/2 year ago. After two months of marriage, my husband Inderjit Singh, Father-in law Avtar Singh, sister-in-law Harjot Kaur started harassing me for dowry. Even though, my marriage was solemnized by my parents as per their capacity. My in-law used to harass and physically assaulted me, when I mentioned this concern to my paternal family, then my parents convinced my times to my in-law's family. Now, two months ago, my husband Inderjit Singh, father-in-law Avtar Singh and sister-in-law Harjot Kaur had asked me to bring of Rs 50000/- from my mother, but my family could not arrange to give Rs.50000/-. Then on 14.07.2022 my husband Inderjit Singh, father in law and sister in law quarrel with me and being fed up with this harassment of asking dowry, I poured diesel oil on me and lit myself in the bathroom. Action should be taken against them and my husband Inderjit Singh, who is a drug addict, who has misappropriate my marriage jewelries, and they have taken in possession of other things, which was given in my marriage. have got my statement recorded to you in the presence of my mother Paramjit Kaur wife Karamjit Singh resident of Badla (Khanna), Kulwinder Singh s/o Chamkaur Singh resident of Sahnewal, which has been read over and explain to me, which is correct.”

Learned counsel for the petitioner submits that the petitioner was married to the deceased on 10.12.2021. No child was born of this wedlock. On 14.7.2022 the deceased poured diesel on

herself and set herself on fire. Learned counsel submits that the date of incident is 14.7.2022, however, the FIR was registered one week later i.e. on 21.7.2022. As the deceased was found fit to make statement, she made dying declaration on 21.7.2022, on the basis of which, Section 304-B IPC was added in the FIR on 22.7.2022. Learned counsel submits that it has been admitted in the FIR itself and the statement of the deceased that she had poured diesel on herself and set herself on fire. It is submitted that thus even as per the statement of the deceased, no injuries have been attributed to the petitioner, nor has it been alleged that the petitioner had poured diesel on the deceased. It is further submitted that the deceased had died almost one week after the incident, due to 75% thermal burn because of which Septicemia had occurred. Learned counsel further submits that even before her marriage with the petitioner, the deceased was a patient of depression and in this regard, learned counsel refers to Annexure P-1, which is medical report of the deceased dated 21.6.2021, as per which, the deceased was a patient of depression and advised medication for the same. Learned counsel also refers to Annexure P-2, which is another medical report of the deceased dated 16.8.2021, which also shows the deceased to be a patient of depression, vide which deceased was advised further medication as well as rest and obseention (sic.). Learned counsel states that there was no dowry demand whatsoever made on behalf of petitioner and his family members, and even no such allegation has been made in the statement/dying declaration of the deceased. It is submitted that mother of the deceased has already turned hostile, as evident from her

testimony as PW1 (Annexure P-3). It is further submitted that it is the petitioner, who had taken the deceased to the hospital.

Per contra learned State counsel has filed the status report dated 21.9.2023 by way of affidavit of Davinder Kumar, PPS, Deputy Superintendent of Police, Circle Nabha, District Patiala on behalf of respondent-State, which is taken on record. Learned State counsel has also filed the custody certificate dated 21.9.2023, which is taken on record. As per the custody certificate, the petitioner has been in custody for 01 year and 02 months as undertrial. Learned State counsel has strongly opposed the prayer for grant of regular bail to the petitioner and submits that in the present case the dying declaration was made by the deceased in the presence of her mother, wherein, the deceased had specifically named the petitioner. He submits that it is therefore of no consequence that mother of the deceased has turned hostile. Learned State counsel submits that three accused have been named in the present FIR, out of which, two accused persons, who are father-in-law and sister-in-law of the deceased have not yet been arrested as they are absconding and are untraceable. It is submitted that mother of the deceased has turned hostile, which shows that the absconding accused persons are tampering with the evidence and already influencing the witnesses. It is, therefore, submitted that if the petitioner is released on regular bail, there is every likelihood/apprehension that he will also attempt to tamper with the evidence/influence the witnesses. Learned State counsel further informs this Court that the charges in the case have been framed, and out of total 15 prosecution witnesses, only one witness i.e. mother of

the deceased has been examined and the next date fixed before the trial Court is 27.9.2023.

Learned counsel for the petitioner counters the arguments of learned State counsel by referring to the judgment of the Hon'ble Supreme Court in ***Rajaram vs. State of Madhya Pradesh and others***, decided on **16.12.2022** in ***Criminal Appeal No(s).2311 of 2022***, wherein, in relevant para 20 it has been held as under :-

“20. This court notices that the present is a case where the second dying declaration has been rejected completely by the High Court. In these circumstances, the cumulative weight of evidence relied upon by the High Court needs to be examined to ascertain whether the appellant is guilty of the offence he stands convicted for, i.e., Section 498A IPC. Ex. P-26, the second dying declaration is the only piece of evidence which names the appellant as one of the perpetrators of cruelty on the deceased along with the other accused. Both the courts below have noticed that in Ex. P-11, the first dying declaration, the appellant has not been named; rather he along with his father took the deceased in a critically injured state to the hospital. Undoubtedly, the focus of the first dying declaration is only upon the incident involving pouring of kerosene and setting the deceased on fire. The second dying declaration, Ex. P-26 alone elaborates acts of cruelty. That is the only piece of incriminating evidence against the accused. As far as the recovery of articles and the smell of kerosene in the report considered by the court are concerned, they are circumstances relating to the incident of

setting the deceased on fire. They do not further the prosecution's case under Section 498-A as against the appellant."

Learned counsel further refers to another judgment of Hon'ble Supreme Court in ***Charan Singh @ Charanjit Singh vs. The State of Uttarakhand***, decided on **20.4.2023**, in ***Criminal Appeal No.447 of 2012***, relevant para No.23 of which reads as under :-

"23. On a collective appreciation of the evidence led by the prosecution, we are of the considered view that the prerequisites to raise presumption under Section 304B IPC and Section 113B of the Indian Evidence Act having not been fulfilled, the conviction of the appellant cannot be justified. Mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused under Section 304B and 498A IPC. The cause of death as such is not known."

I have heard learned counsel for the parties and gone through the case file carefully.

Without commenting on the merits of the case, however, keeping in view the totality of facts and circumstances of the case, including the fact that the trial of the case is likely to consume considerable time as out of total 15 prosecution witnesses, only one witness has been examined so far; and keeping in view the custodial period of the petitioner; and the fact that there is no other case pending against him, his further custody may not be justified. Therefore, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner-Inderjit Singh s/o Avtar Singh be released on regular bail subject to his furnishing requisite

bail bonds/surety bonds to the satisfaction of the trial Court/Duty
Magistrate, concerned.

The petition is allowed.

September 22, 2023
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No