

2023:PHHC:083828

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

CRM M-34074 of 2022

Date of Decision: July 03, 2023

Manisha

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Jagjit Singh Dahiya, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

Mr. Ashit Malik, Advocate
for the complainant.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has moved the present petition under Section 439 Cr.P.C. with a prayer to grant the concession of regular bail to her in case FIR No. 342 dated 17.06.2021 under Sections 302, 201 IPC lateron added Sections 120-B/34 IPC registered at Police Station Kundli, District Sonapat.

2. The FIR in the present case was got registered by Shri Om son of Hoshiar Singh by alleging that his elder son Sandeep was aged about 34 years and was married to Manisha, the present petitioner. A son and a daughter were born out of the said nuptial knot. At about 04.00 p.m., on 14.06.2021, his son had left for Sonapat in his Swift car bearing registration No. DL2CBB2917 and was

carrying a mobile phone with him, but his son did not return home and the phone was switched off. Ultimately, on 15.06.2021, he had lodged a report regarding missing of his son in Police Station Najafgarh and searched for him. However, in the evening on 15.06.2021, his car was found in the area of village Sakhol and he had informed the police in this regard. The police from Police Station Sector 6 Bahadurgarh shifted the vehicle from there to police station. On 16.06.2021, the complainant alongwith his relatives reached near the bridge of double canal and the employee of Irrigation Department told them that on 15.06.2021, a dead body of a young boy was found near the canal and the action in this regard was taken by Police Post Barota. On this, the complainant came to Police Post Barota and saw the photographs of the dead body of the unknown person and, thereafter, recognized the dead body of his son in the hospital. After identification of the dead body, he went to the police and lodged the present FIR against certain unknown persons. After registration of the present case on 17.06.2021, the investigation was conducted by the local police. During the course of investigation, on 24.06.2021, the complainant submitted an application to the SHO, Police Station Kundli and alleged that he had verified the facts at his own level and his daughter-in-law Manisha, i.e., the present petitioner (wife of Sandeep, deceased) had illicit relations with Hari Om and she had hatched a conspiracy with Hari Om. In pursuance of the said conspiracy, in the night intervening 14/15.06.2021, Hari Om colluded

with some other person and after killing Sandeep, he was thrown near the *Katcha* path adjoining the canal and the complainant prayed for taking legal action against the present petitioner, Hari Om co-accused and other persons.

3. Learned counsel for the petitioner submitted that the petitioner has been falsely involved in the present case. In fact, the petitioner was leading a happy married life with her husband Sandeep (deceased) and both of them were residing with their two minor children aged 11 years and 07 years. On 14.06.2021, at about 4.00 p.m., her husband went to Sonepat in his Swift car but did not return home and the missing report was lodged by her father-in-law/complainant in Police Station Najafgarh. Even the police could not search either the husband or car of her husband, but her father-in-law himself searched the car and informed the police in this regard. On 16.06.2021, again the father-in-law allegedly contacted the employees of Irrigation Department and was informed that a dead body of the young boy was found near the the canal. The police as well as the FSL team investigated the places, where the car of the deceased and the dead body were found. However, they could not trace the keys of the car and the keys of the car were ultimately found by the father-in-law on 18.06.2021, near the place of alleged occurrence and he had handed over the same to the police. Learned counsel further submitted that a property dispute was pending between the family members of her husband on one side and her

husband on the other side. Her husband was allegedly murdered by certain unknown persons and the petitioner suspected that her father-in-law or brother-in-law got him murdered due to property dispute pending between them. Ultimately, in order to usurp the share of her husband in the movable and immovable properties, the petitioner was implicated in the present case by moving a false application against her on 24.06.2021, i.e. after about 9 days of the occurrence. Learned counsel further submitted that the entire prosecution story was manipulated just to grab the movable and immovable properties of the husband of the petitioner. He further contended that the petitioner is sought to be implicated in the present case on the basis of the call details between the petitioner and Hari Om, co-accused. In fact, the father-in-law of the petitioner used to make calls to Hari Om regarding non-payment of rent. After the death of her husband, she was in a state of shock and her phone was in the custody of the complainant and other family members. Thus, the complainant and other family members had manipulated the evidence, just to ensure her false implication in a criminal case. Even, the petitioner was arrested in the present case on 28.06.2021 and nothing was recovered from her. Still further, it has been alleged that she was named by the co-accused Hari Om in his disclosure statement. Consequently, except the disclosure statement of the co-accused, there is no other evidence against her and she has been involved in the present case with the aid of Section 120-B. Further, as

per the case of the prosecution itself even her presence has not been shown at the place of the occurrence and it has been falsely alleged that she was in touch with the co-accused while they were committing the crime. Even, the said calls were made by complainant himself to Hari Om as her mobile phone was lying in her matrimonial home. Learned counsel further submitted that in the present case the investigation was complete and the trial is pending before the learned trial Court. The prosecution has cited 31 witnesses and out of them, only 02 witnesses have been recorded and the next date of hearing for prosecution evidence is fixed for 19.10.2023. Thus, the conclusion of the trial may take quite a long time and her further custody would serve no meaningful purpose. Apart from that, the petitioner is a lady and there is no one at home to take care of her two minor children aged 11 years and 07 years; thus, her case deserves sympathetic consideration by this Court.

4. A status report has been filed by way of an affidavit of DSP, Police Station Rai, Sonipat, on behalf of the State of Haryana. The learned State counsel contended that after the registration of the case, the investigation was conducted fairly and impartially by the police. On 24.06.2021, the supplementary statement of the complainant was recorded, wherein, he stated that he had verified the facts at his own level and his daughter-in-law Manisha wife of Sandeep was having illicit relations with Hari Om, co-accused, who was residing as a tenant in his house. Manisha hatched a conspiracy

with Hari Om and got her husband killed. The learned State counsel submitted that Hari Om had associated his friend Sagar resident of village Badoli, District Sonapat in the present crime and on 14.06.2021, he and Sagar had taken away Sandeep on the pretext of taking liquor. He further contended that Sandeep (since deceased) was administered liquor in excess and on the night of 14/15.06.2021, Sagar caught hold of the hands of Sandeep and he wrapped his cloth/parna around the neck of Sandeep and killed him by pressing his neck with the said cloth. Sagar took away Rs. 5500/-, his driving licence and Aadhar Card from the pocket of Sandeep and kept the same with him. In pursuance of his disclosure statement, Hari Om got recovered clothes/parna used in the commission of the crime and also demarcated the place of the occurrence. The learned State counsel further submitted that while the crime was committed, Hari Om was in touch with Manisha telephonically. Even a mobile phone was recovered from Sagar son of Bijender @ Kala, from which, he used to talk to Hari Om and driving licence and Aadhar Card were recovered from his residential house. Learned State counsel further submitted that apart from the complaint submitted by the complainant, the petitioner was named by Hari Om, co-accused in his disclosure statement and she had conspired with Hari Om to commit the crime. In case, she is enlarged on bail, she can tamper with the prosecution evidence by influencing the witnesses, who are yet to be examined.

5. I have heard the learned counsel for the parties and perused the record.

6. It has been held by the Hon'ble Supreme Court in the matter of **Gurbaksh Singh Sibbia etc. VS. The State of Punjab, AIR 1980 SC 1632** as under:-

"Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. The Court has also observed that in which case bail should be granted and in which case it should be refused is a matter of discretion. The court found it interesting to note that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King Emperor, AIR 1924 Calcutta 476, that the object of bail was to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused was whether it was probable that the party would appear to take his trial and that it was indisputable that bail was not to be withheld as a punishment. The Supreme Court also referred to the observation of the Allahabad High Court in K.N. Joglekar v. Emperor, AIR 1931 Allahabad 504, that Section 498 of the Old Code which corresponds to Section 439 of the New Code, conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. The Allahabad High Court had also observed that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only

principle which was established was that the discretion should be exercised judiciously. The Supreme Court referred also the decision of the Allahabad High Court in Emperor v. H.L. Hutchinson, AIR 1931 Allahabad 356, wherein it was held that the principle to be deduced from the various sections in the Cr.P.C. was that grant of bail is the rule and refusal is the exception, that as a presumably innocent person, the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence and that an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. The High Court had also held that it would be very unwise to make an attempt to lay down any particular rules which would bind the High Court, having regard to the fact that the legislature itself left the discretion of the Court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes bail may be granted but not in other classes. The Supreme Court apparently approved the above views and observations and held (vide paragraph 30) as follows : "It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

7. This Court has also discussed the various principles, which should be taken into account while considering the grant of bail

to an accused in the matter of CRM M-21148 of 2022 titled as Balwinder Singh Vs. State of Punjab of 2022 decided on 17.08.2022.

10. The legal position emerging from the above discussion can be summarised as follows :

"(a) Personal liberty is too precious a value of our Constitutional System recognised under Article 21 that the crucial power to negate it is a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. Deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution.

(b) As a presumably innocent person the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence. A man on bail has a better chance to prepare and present his case than one remanded in custody. An accused person who enjoys freedom is in a much better position to look after his case and properly defend himself than if he were in custody. Hence grant of bail is the rule and refusal is the exception.

(c) The object of bail is to secure the attendance of the accused at the trial. The principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment.

(d) Bail is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect

process of punishing the accused person before he is convicted.

(e) Judges have to consider applications for bail keeping passions and prejudices out of their decisions.

(f) In which case bail should be granted and in which case it should be refused is a matter of discretion subject only to the restrictions contained in Section 437(1) of the Criminal Procedure Code. But the said discretion should be exercised judiciously.

(g) The powers of the Court of Session or the High Court to grant bail under Section 439(1) of Criminal Procedure Code are very wide and unrestricted. The restrictions mentioned in Section 437(1) do not apply to the special powers of the High Court or the Court of Session to grant bail under Section 439(1). Unlike under Section 437 (1), there is no ban imposed under Section 439(1) against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. However while considering an application for Bail under Section 439(1), the High Court or the Court of Sessions will have to exercise its judicial discretion also bearing in mind, among other things, the rationale behind the ban imposed under Section 437(1) against granting bail to persons accused of offences punishable with death or imprisonment for life.

(h) There is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion

in granting or refusing bail. The answer to the question whether to grant bail or not depends upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.

(i) While exercising the discretion to grant or refuse bail the Court will have to take into account various considerations like the nature and seriousness of the offence; the circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage of investigation etc. In view of so many variable factors the considerations which should weigh with the Court cannot be Exhaustively set out. However, the two paramount considerations are (i) the likelihood of the accused fleeing from justice, and (ii) the likelihood of the accused tampering with prosecution evidence. These two considerations in fact relate to ensuring a fair trial of the case in a Court of justice and hence it is essential that due and proper weight should be bestowed on these two factors.

(j) While exercising the power under Section 437 of the Criminal Procedure Code in cases involving non-

bailable offences except cases relating to offences punishable with death or imprisonment for life, judicial discretion would always be exercised by the Court in favour of granting bail subject to sub-section 3 of Section 437 with regard to imposition of conditions, if necessary. Unless exceptional circumstances are brought to the notice of the Court which might defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life.

(k) If investigation has not been completed and if the release of the accused on bail is likely to hamper the investigation, bail can be refused in order to ensure a proper and fair investigation.

(l) If there are sufficient reasons to have a reasonable apprehension that the accused will flee from justice or will tamper with prosecution evidence he can be refused bail in order to ensure a fair trial of the case.

(m) The Court may refuse bail if there are sufficient reasons to apprehend that the accused will repeat a serious offence if he is released on bail.

(n) For the purpose of granting or refusing bail there is no classification of the offences except the ban under Section 437(1) of the Criminal Procedure Code against grant of bail in the case of offences punishable with death or life imprisonment. Hence there is no statutory support or justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. When the Court has been granted discretion in the matter of granting bail

and when there is no statute prescribing a special treatment in the case of a particular offence the Court cannot classify the cases and say that in particular classes bail may be granted but not in others. Not only in the case of economic offences but also in the case of other offences the Court will have to consider the larger interest of the public or the State. Hence only the considerations which should normally weigh with the Court in the case of other non- bailable offences should apply in the case of economic offences also. It cannot be said that bail should invariably be refused in cases involving serious economic offences.

(o) Law does not authorise or permit any discrimination between a foreign National and an Indian National in the matter of granting bail. What is permissible is that, considering the facts and circumstances of each case, the Court can impose different conditions which are necessary to ensure that the accused will be available for facing trial. It cannot be said that an accused will not be granted bail because he is a foreign national."

8. It is not in dispute that the FIR in the instant case was got registered by the complainant against unknown persons on 17.06.2021. However, the complainant, who is the father of Sandeep, deceased and father-in-law of the petitioner, raised suspicion regarding the involvement of the petitioner in the crime, by moving an application dated 24.06.2021 (Annexure P-2), i.e. after a week of the registration of the case. Later on, the petitioner was arrested in the present case on 28.06.2021, on the basis of her call details with the co-accused. Still further, no recovery was effected from her and she

was not even present at the place of occurrence and has been involved in the present case with the aid of Section 120-B IPC. Apart from that, she is a lady and there is no one at home to take care of her two minor children aged 11 years and 07 years as her husband has already died. Further, only two witnesses have been examined out of total 31 witnesses and the conclusion of the trial may take quite a long time.

9. In view of the above discussion, without commenting any further on the merits, the present petition is allowed and the petitioner is ordered to be released on bail on her furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned.

July 03, 2023

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No