

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-45235-2023 (O&M)

Date of decision: 15.09.2023

Sukhwinder Singh

...Petitioner(s)

Vs.

State of Punjab

...Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

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

NIDHI GUPTA, J.

Prayer in this first petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.284 dated 08.09.2021 registered under Section 306 IPC (Section 304-B IPC added later on) at Police Station City Kapurthala, District Kapurthala.

2. FIR in the present case was registered on the basis of complaint moved by the brother of the deceased. Facts of the case as mentioned in the FIR are reproduced hereinbelow:-

“Statement of Sundeep Kumar aged about 24 years S/o Surinder Kumar resident of Mohalla Lahori Gate P.S. City, Kapurthala Mobile No.9517243279. Stated that I am resident of the above-mentioned address and doing the Job in the department of Punjab Home Guard at Kapurthala. I have three sisters, out of which elder two had married and younger one is unmarried and doing household work. My sister, whose

marriage was solemnized with Malkit Sandhu son of Prem Singh resident of Mohalla Preet Nagar, H. No.617/10 P.S. City Kapurthala on dated 02.Feb., 2021. At the time of marriage, we had given dowry articles and Gold ornaments above out capacity and marriage of her was solemnized in the Best Western Hotel, Kapurthala. Father Naib Singh has four brothers. After marriage of 3-4 days, husband of my sister Malkit Sandhu, mother in-law Kulwinder Kaur w/o Prem Singh, brother in-law Karam Singh, Sukhwinder Singh sons of Prem Singh resident of Mohalla Preet Nagar, H. No.617/10 P.S. City Kapurthala and maternal mother-in-law Bhajan Kaur w/o Balwinder Singh resident of Laxmi Nagar Kapurthala; and Maternal Uncle Kuldeep Singh resident of Village Kadala and above all relatives were starting to harass and beating to my sister. After the marriage about one month, my sister came back her parental house and told about doing with her torment. Then after about 20 days, I left my sister in-her laws house and told the mother in-law of my sister that my mother is ill. We had already given the Istari Dhan as per our capacity and will give more, but do not harass like as my sister. Then I came back after leaving my sister at matrimonial home. Then after one week my sister told me on telephone that they are torturing me badly, then I went in the house of my sister in laws with MC Harsimranjit Singh, where mother-in-law of my sister,

both brother-in-law Maternal uncle Kuldeep Singh resident of Village Kadala and maternal mother-in-law (Mami mediator) resident of Laxmi Nagar were present. Where my sister told us by weeping that all of them are demanding dowry from her and maternal uncle of my sister told that he was spent of Rs.40,00000/- cash on the marriage his daughter and gave one Car of Rs.18,00000/- and what you have given on the marriage, you should bring cash and car from her parents and we have spent of Rs.8 Lac for sending their son abroad and that same should be brought from her parental house, to which I replied we cannot pay more amount. Then maternal mother in-law (Mami) told that you father was police employee after his death you have got much money and you have also doing job in police, therefore you should arrange Car and cash from anywhere, then MC of our Mohalla namely Harsimranjit Singh folded hands before them and said that you may not a very big demand because they are poor family and they have already given more Istari Dhan above their capacity. Then all of them started to use to abuse language with us. Then we came back to our house along with my sister. After that my sister has shared all this thing with his husband, who told that whatever my mother and maternal ante mediator will ask you and those would have to fulfill, even after that my sister made many requests to her husband on telephone, but

husband of my sister told that if we cannot pay cash and give car then he will not keep with him. One week from today, my sister talked her husband on telephone, who told my sister that if we do not agree with the terms of his mother and maternal ante, then he will give divorce of my sister, then my sister got disturbed. Then I have told my sister why she is disturbed, then my sister told the whole story asked his husband about to give her divorce. Therefore, after that days my sister came in depression, who today at about 12, O'clock, day has finished her life by consuming some intoxicants substances went to her room and fell unconscious due to the torture all of the above, whom we took to civil hospital Kapurthala for treatment, but doctor by seeing her bad condition, referred her to Jalandhar by giving first aid, but in midway my sister has died, who finished her life from the torture of the above said persons. Action be taken against them..."

3. Learned counsel for the petitioner inter alia submits that the petitioner before this Court is the 21-year-old brother-in-law of the deceased. It is submitted that the deceased was married to the brother of the petitioner on 02.02.2021. Barely one month after the marriage, the petitioner's brother/husband of the deceased, left for Portugal in March, 2021 as he was employed there. Immediately thereafter, the deceased also left for her parental home in March, 2021 itself. It is submitted that the deceased was at her parental home when she committed suicide.

4. Learned counsel contends that the deceased was suffering from depression at the time of incident. It is submitted that the complainant was also aware of this fact and himself used to provide medicines to the deceased for depression.

5. Learned counsel further states that the FIR has been registered against the petitioner namely Sukhwinder Singh who is brother-in-law of the deceased; second brother-in-law of the deceased, namely Karam Singh; mother-in-law of the deceased, namely Kulwinder Kaur; and husband of the deceased, namely Malkit Sandhu. Learned counsel submits that husband of the deceased is in Portugal; and the second brother-in-law/Karam Singh and mother-in-law of the deceased have already been granted bail by the Hon'ble Supreme Court vide order dated 02.08.2023 (Annexure P7).

6. Learned counsel submits that the petitioner too had been granted regular bail by the learned Additional Sessions Judge, Kapurthala vide order dated 07.10.2021 (Annexure P1). However, after about 2 months of the registration of the FIR, the complainant, with intent to improve his case, had produced a mobile phone allegedly belonging to the deceased and handed it over to the police stating that the mobile phone contained a suicide note containing allegations of demand of dowry against the petitioner and his family members. It is submitted that thereafter, DDR No.34 dated 01.11.2021 (Annexure P-3), was filed and offence under Section 304-B IPC was added and offence under Section 306 IPC was deleted. It is submitted that thereafter, the petitioner and his

family members filed application seeking anticipatory bail before this Court, however, the same was dismissed by this Court vide order dated 25.05.2023 (Annexure P6). It is submitted that thereafter, the petitioner along with the co-accused approached the Hon'ble Supreme Court for grant of anticipatory bail. However, in the interregnum, the petitioner was arrested on 15.06.2023. Consequentially, vide order dated 02.08.2023 (Annexure P7), Hon'ble Supreme Court granted anticipatory bail only to co-accused i.e. mother-in-law and second brother-in-law of the deceased.

7. Learned counsel for the petitioner vehemently submits that it is very pertinent that suicide note (Annexure P-2) was produced by the complainant almost two months after the death of the deceased, in respect of which DDR was registered on 01.11.2021 (Annexure P-3), in pursuance to which the petitioner was taken into custody.

8. Learned counsel for the petitioner further submits that learned Additional Sessions Judge, Kapurthala was in grave error in dismissing the petitioner's application for grant of regular bail vide impugned order dated 24.08.2023 as the learned Additional Sessions Judge, Kapurthala has failed to consider that it is settled law that when during the course of investigation, a greater offence is added as part of the same transaction or event, it would not authorise the police to seek further detention of the accused. It is submitted that in the present case, the petitioner had already remained in custody for an offence under Section 306 IPC and therefore, learned Additional Sessions Judge, Kapurthala ought to have appreciated that nothing is to be recovered from the petitioner. It is

submitted that the learned Court below also ought to have appreciated that upon grant of regular bail by the Court of learned Additional Sessions Judge, Kapurthala on 07.10.2021 in the offence under Section 306 IPC, the petitioner had never misused the said liberty.

9. Learned counsel further submits that needless to say, the petitioner undertakes to join investigation of the case as and when required by the police and shall abide by all the conditions imposed, and in case this Court is pleased to grant bail to the petitioner, the petitioner shall not abscond or tamper with the evidence or try and influence the prosecution evidence. It is submitted that the petitioner shall also not leave India without permission of this Court.

10. In support of her contentions, learned counsel for the petitioner relies upon judgments of the Hon'ble Supreme Court rendered in **"Pradeep Ram Vs. The State of Jharkhand & Another"** Criminal Appeal Nos. 816-817 of 2019; **"Charan Singh @ Charanjit Singh Vs. The State of Uttarakhand"** Criminal Appeal No.447 of 2012; **"Sanjay Chandra Vs. CBI"** Criminal Appeal No.2178 of 2011 (and other connected cases); of Patna High Court in **"Mira Devi @ Meera Devi & Another Vs. The State of Bihar"** Criminal Miscellaneous No.34640 of 2020 arising out of PS Case No.176 of 2020; and of this Court in **"Manish Sharma Vs. State of Haryana"** Law Finder Doc ID # 1805228; **"Mool Chand Vs. State of Haryana"** Law Finder Doc ID # 131220; **"Jagdeep Kaur Vs. State of Punjab"** Law Finder Doc ID # 486683; and **"Pooja Devi Vs. State of Haryana"** Law Finder Doc ID # 604901.

11. Learned counsel for the petitioner in particular relies upon judgment of this Court in **Jagdeep Kaur (supra)** wherein it has been held as follows:-

“Indian Penal Code, Section 306 – Criminal Procedure Code, Section 438 – Abetment of suicide – Suicide by a person – He left a suicide note stating that his wife and 3 others were responsible for his death – This would not make out an offence of abetment – Anticipatory bail granted to accused.”

12. Learned counsel also refers to the judgment of Hon’ble Supreme Court in **Charan Singh @ Charanjit Singh (supra)** wherein it has been held as follows:-

“Indian Penal Code, 1860 – Section 304B and 498A – Mere death of a wife under unnatural circumstances, in a matrimonial home, within seven years of marriage is not sufficient to convict the husband for dowry death.”

13. Notice of motion.

14. Mr. Sushant Kareer, Advocate puts in appearance on behalf of the complainant and files Power of Attorney which is taken on record.

15. Learned counsel for the complainant vehemently opposes the contentions made on behalf of the petitioner and submits that the petitioner cannot claim parity with his co-accused/brother-in-law and mother-in-law of the deceased who have been accorded the concession of bail by the Hon’ble Supreme Court as, the case of the petitioner is not on a

similar footing inasmuch as: a) unlike the petitioner, the brother-in-law and mother-in-law who have been granted bail have not been named by the deceased in the suicide note; and b) that the mother-in-law of the deceased is an aged woman of 54 years, and the second brother-in-law of the deceased namely Karam Singh who has been granted bail, is mentally incapacitated.

16. It is submitted that on the contrary, the petitioner has been categorically named by the deceased in the suicide note. In fact, specific and direct allegation has been made against the petitioner in the suicide note that he had threatened to kill the deceased and had forcibly left her at her father's house to bring dowry, and therefore the petitioner cannot claim parity with the other co-accused. In this regard, learned counsel refers to the suicide note (Annexure P2) wherein the deceased has stated that *"...All the time they kept me in fear. They used to beat me day and night. First of all my younger brother-in-law Sukhwinder Singh threatened to kill me and forcibly left me at my father's house to bring dowry. When I told my husband even he did not support me and kept on making excuses and kept on telling lies that he will do something...."*. Learned counsel submits that in this view of the matter, the petitioner cannot be treated on same terms as the co-accused who have been granted bail by the Hon'ble Supreme Court.

17. However, learned counsel for the complainant very fairly admits that there is nothing whatsoever on record to substantiate his

contention that the second brother-in-law of the deceased namely Karam Singh, was mentally incapacitated.

18. Learned counsel further refers to the FSL report dated 15.04.2022 (Annexure P4) wherein upon evaluation, the expert has reported that authorship of the suicide note is found to be similar to the standard writings of the deceased. It is submitted that therefore, the FSL report in respect of the handwriting of the deceased in the suicide note being positive, the veracity of the suicide note cannot be doubted.

19. Learned counsel further vehemently controverts the contention on behalf of the petitioner that the deceased was suffering from depression and unequivocally states the said assertion to be factually incorrect. Learned counsel further states that the complainant had no knowledge of any depression purported to have been suffered by the deceased, and categorically denies that the complainant was supplying medication to the deceased to help her overcome her depression.

20. However, when confronted with the writing made by the complainant himself in the FIR to the effect that *"Therefore, after those days my sister came in depression ..."*, Learned counsel turns his earlier statement on its head and submits that the deceased went into depression and returned to her parental home due to the torture inflicted upon her by the petitioner and his family members.

21. Mr. Kunwarbir Singh, AAG Punjab accepts notice on behalf of the respondent and files custody certificate dated 14.09.2023 which is taken on record. As per custody certificate, the petitioner has been

in custody for 3 months. Learned counsel for the State opposes the grant of bail to the petitioner and submits that serious allegations have been made against the petitioner in the FIR. Learned State Counsel further informs this Court that challan in the matter has been filed on 10.08.2023, however, charges have not yet been framed and next date of hearing before the learned trial Court is 28.09.2023.

22. Learned counsel for the petitioner counters the above said arguments made on behalf of the complainant and submits that DDR dated 01.11.2021 (Annexure P3) was registered in respect of the suicide note recorded in the alleged telephone of the deceased through voice message by typing in English; whereas FSL report dated 15.04.2022 (Annexure P4) referred to by the counsel for the complainant is in respect of some other suicide note handwritten in Gurmukhi script supplied by the complainant even later on 31.03.2022.

23. I have heard learned counsel for the parties.

24. Perusal of record reveals that submission of learned counsel for the complainant that second brother-in-law and mother-in-law of the deceased stood on a different footing from the petitioner as they have not been named in the suicide note, is factually incorrect as perusal of the said suicide note (Annexure P-2), reveals that the deceased has categorically stated therein *"..I am now going to take my life and the people responsible for my death are Malkit Sandhu, brothers in-law Sukhwinder Singh and Karan, and mother in-law Kulwinder Kaur."*

25. Further as already admitted by learned counsel for the complainant, there is nothing whatsoever before this Court, or even recorded by the Hon'ble Supreme Court in its order dated 02.08.2023, to suggest that second brother-in-law of the deceased namely Karam Singh is mentally incapacitated.

26. Accordingly, without commenting on the merits of the matter, however, keeping in view the totality of the facts and circumstances of the case, including the fact that co-accused/brother-in-law Karam Singh and mother-in-law Kulwinder Kaur against whom similar allegations have been made in the FIR, have already been granted bail by the Hon'ble Supreme Court vide order dated 02.08.2023 (Annexure P7); and the fact that perusal of custody certificate reveals that there are no other cases against the petitioner; and the fact that the deceased was at her parental home when she committed suicide; the present petition is **allowed**.

27. The petitioner Sukhwinder Singh s/o Prem Singh is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of the CJM/Duty Magistrate concerned. However, it is made clear that nothing stated above shall be deemed to be an expression of opinion on the merits of the case.

28. Pending application(s) if any also stand(s) disposed of.

15.09.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No