

CRM-M-57558-2022 (O & M)

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(215) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-57558-2022 (O & M)
Date of Decision: 28.08.2023

Kaushalya

... Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Japsehaj Singh, Advocate,
for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

Mr. Gurmej Singh Bhinder, Advocate, for the complainant.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C is for the grant of regular bail to the petitioner in case bearing FIR No.78 dated 09.05.2022 under Sections 302, 34 IPC registered at Police Station Division No.5, Jalandhar.

2. The brief facts of the case are that the statement of the complainant-Shubham was recorded to the effect that he was of the age of about 22 years and working in a Salon. On 09.05.2022 at 10.00 a.m., he (complainant) alongwith his mother were present at his house whereas his father Ashwani Kumar (deceased) was going out to the shop to buy household articles. When his father went out from the house, then his aunt-Kaushalya (petitioner) alongwith her daughters, namely, Nikku and Jyoti were standing there and restrained his father and also started beating him. The three persons

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inflicted blunt injuries on his father and on hearing their noise when he (complainant) came outside, the accused persons threw his father on the ground and gave beatings to him (complainant). Thereafter, his mother was also given beatings. People gathered at the spot and his father was taken to the hospital where he succumbed to his injuries. The motive behind the occurrence was a property dispute regarding partition of the house.

3. The learned counsel for the petitioner contends that no offence under Section 302 IPC was made out. The injuries purportedly received by the deceased were a contusion on the left side of the face and an abrasion over the right hand. Both the said injuries had been declared to be simple in nature. In fact, the deceased had died on account of 'myocardial infarction' as was evident from the doctors' opinion. Therefore, at best, the petitioner could be held liable for having committed an offence under Section 323 IPC. He contends that the petitioner was of the age of 70 years and being a weak and feeble lady, it was unlikely that she had committed the offence in question that too in the presence of the complainant who was of the age of 22 years. As the petitioner had been granted the concession of interim regular bail and had not misused the said concession and the trial of the present case is not likely to be concluded anytime soon, the interim bail already granted ought to be confirmed.

4. The learned counsel for the State while referring to the reply dated 27.08.2023, on the other hand, contends that the petitioner and her co-accused assaulted the deceased, leading to his death. Therefore, she was not entitled to the concession of bail. She, however, concedes that the petitioner

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was in custody since 09.05.2022 (though she was released on interim bail thereafter) and none of the 15 prosecution witnesses had been examined so far.

5. The learned counsel for the complainant, on the other hand, contends that the petitioner and her co-accused brutally assaulted the deceased leading to his death. Therefore, she was not entitled to the concession as prayed for.

6. I have heard the learned counsel for the parties.

7. As per the MLR, the deceased had received the following injuries:-

Injury No.	Detail	Nature
1.	Reddish Contusion 3cm x 1cm seen over left side of face, no underlying swelling.	Simple
2.	Reddish abrasion 1cm x 0.1cm seen over right hand, no underlying swelling	Simple

As per the opinion of the doctor, the cause of death was as under:-

“*Opinion*”

After receiving Histopathology Report from Govt. Medical College, Amritsar sent by Dr. Manmeet Kaur, Assistant Professor department of Pathology vide report MLC No.1471/22 dated 28.05.2022, Path No.990/path/22/dated 27.09.2022.

Report is as per. Heart with gross weight 570 g. LVW Thickness 2.8cm.

Microscopic Examination Pieces processed from myocardial wall show scattered areas of diffuse myocardial fibrosis around the small blood vessels in the interstitial tissue of the myocardium. Intervening single fibres and groups of myocardial

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fibres show variation in fibre size. Some of the fibres are atropic and rest are hypertrophic (features suggestive of chronic Ischaemic Heart disease CIHD)
Sections taken from coronary arteries show atherosclerotic plaques with significant narrowing (75%) of the lumen.
After discussing with the board members have decided the cause of death in this case is myocardial infarction which is sufficient to cause death in normal course of nature”.

8. A perusal of the aforementioned injuries and the opinion regarding the cause of death would show that it would be a matter of adjudication during trial as to what offence, if any, was made out. Admittedly, the petitioner is of the age of 70 years and despite having been released on interim bail, has not misused the said concession. Further, none of the 15 prosecution witnesses have been examined so far. Therefore, the trial in the present case is not likely to be concluded anytime soon. In this view of the matter, no useful purpose would be served by sending the petitioner back into the custody.

9. In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner-Kaushalya is ordered to be released on bail subject to her furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

(JASJIT SINGH BEDI)
JUDGE

August 28, 2023
sukhpreet

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