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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58270-2022 (O&M)

Date of Decision:- 17.04.2023

Khatuni

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Dr. Pankaj Nanhera, Advocate for the petitioner.

Ms. Deepshikha Chauhan, Asst. A.G. Haryana.

AMARJOT BHATTI, J. (Oral)

CRM-48410-2022

Exemption allowed, subject to all just exceptions.

CRM-M-58270-2022

The petitioner – Khatuni has filed this petition under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No. 127 dated 31.03.2011, under Section 304-B read with Section 34 of IPC, registered at Police Station Sohna, Gurugram.

The facts of the case are that the complainant Aash Mohammad gave his statement to the police that his sister i.e. the victim, aged about 19 years was married to Momin on 20.12.2009. They had given sufficient dowry at the time of marriage. However, Momin, his mother Khatuni, father Ilu, brother Asid, sister Abida and uncle Rehmad were unhappy with the dowry articles and pressurized his sister to bring Rs. 1 lac and a car. On 30.03.2011, they were informed that his sister was missing from the house.

They along with the Sarpanch of village Mehmood Ulhasan and other respectables reached the village Kulhiaka. The family of Momin misled

them. The dead body of his sister was recovered from the area near Satlaka Canal. His sister was either killed by the accused persons or she was forced to die. With these allegations, present FIR has been registered.

Learned counsel for the petitioner argued that she is falsely implicated in this case. She is 67 years old. Earlier, during investigation in the aforesaid FIR, Momin was arrested on 17.04.2011 and her husband Ilu was arrested on 23.05.2011, who has now expired. She was never arrested in this case. After investigation, the trial had started and ultimately, Momin and Ilu were acquitted vide judgment dated 20.11.2012, which is Annexure P-2. Now, it is alleged that she was declared proclaimed offender on 05.06.2012 and therefore, she is apprehending her arrest. She was never served nor she is aware of any proclamation proceedings carried out regarding her. Now, it is alleged that she was declared proclaimed offender on 05.06.2012 and the police is trying to arrest her after a period of about 10 years. She is ready to face the trial and abide by the terms of bail order. It is prayed that her anticipatory bail application may be allowed.

Bail application is opposed by learned counsel representing the State. It is claimed that the present petitioner was declared proclaimed offender on 05.06.2012 and proclaimed offender challan is presented in the Court on 06.10.2012. It is conceded that the record regarding declaring her as a proclaimed offender is not available in the record room of the Courts. It is alleged that since, she was a proclaimed offender, therefore, she is not entitled to the concession of anticipatory bail. So far as the other co-accused are concerned, it is conceded that they were acquitted by learned Additional Sessions Judge, Gurugram vide judgment dated 20.11.2012,

which is Annexure R-1.

I have considered the arguments and have gone through the record carefully. It is the case of petitioner that she was never summoned in the aforesaid FIR nor anybody procured her presence. She further alleged that she is not aware that she was declared proclaimed offender on 05.06.2012. The status report filed by the State further clarifies that there is no record available in the judicial record room declaring the present petitioner as proclaimed offender. So far as the State is concerned, they have failed to produce any document from the police file to establish that the petitioner was declared proclaimed offender by filing application in the Court and by following the prescribed procedure. The effort was also made by this Court to procure the record of proceedings vide which the present petitioner was declared proclaimed offender. I have received the report of learned District and Sessions Judge, Gurugram vide letter bearing No. 802/C-29 dated 20.02.2023 and another report of Civil Judge (Jr. Divn.)-cum-Judicial Magistrate First Class, Gurugram bearing No. 171 dated 27.03.2023, duly forwarded by learned District and Sessions Judge, Gurugram vide letter bearing No. 1349/C.29 dated 29.03.2023 vide which it is clear that the record regarding declaring the present petitioner as proclaimed offender could not be traced out. Thus, the same could not be produced in this Court. Considering the aforesaid letters, the learned District and Sessions Judge, Gurugram is directed that the aforesaid record vide which Khatuni was declared proclaimed offender be traced out under the supervision of concerned Judge, who is Incharge of the record room and in case of failure to trace out the record, then to follow the proper procedure for its reconstruction and to hold an inquiry against the official concerned who is responsible for the missing of judicial record as per

rules.

On the merits of the present anticipatory bail application, it cannot be ignored that the other two accused namely Momin and Ilu were acquitted of the charge framed against them in the aforesaid FIR vide judgment dated 20.11.2012, Annexure P-2/Annexure R-1. It is claimed in the status report that the challan qua the present petitioner being proclaimed offender was presented on 06.10.2012. The present anticipatory bail application has been filed by the petitioner on 10.12.2022 i.e. after a gap of more than 10 years. The present petitioner is ready to face the trial and abide by the terms of bail order. Therefore, considering these facts, the present anticipatory bail application filed by the petitioner – Khatuni is allowed. She be not arrested. She is directed to surrender before the trial Court within three weeks from today and be released on bail to the satisfaction of trial Court/Duty Judge concerned.

The petition is accordingly, allowed.

Copy of this order be also sent to learned District and Sessions Judge, Gurugram for compliance.

17.04.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No