

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-58457-2023 (O&M)

Date of order: 24.11.2023

Jaswinder Pal Singh

.....Petitioner(s)

Vs.

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Parminder Singh-I, Advocate
for the petitioner.

Mr. Abhay Pal Singh Gill, DAG Punjab.

Nidhi Gupta, J.

Present is the second petition filed by the petitioner under Section 439 of Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") seeking grant of regular bail in case FIR No.129 dated 31.08.2022 registered under Sections 306, 511 and 116 of Indian Penal Code, 1860 (hereinafter referred to as "IPC") at Police Station Nahianwala, District Bathinda.

2. FIR in the present case was registered on the basis of statement of the deceased herself and the same reads as under:-

"....I got married with Jaswinder Pal Singh, about 22 years ago from this I have two children. Harleen Kaur is daughter and Harman Singh is son. Daughter has been married in Village Hari Nau, District Faridkot. Son is unmarried. I and my husband usually quarreled. My husband is a patient of sugar for the last about 7 years, therefore, he has become impotent. Due to this I had attachment with another person. My in-laws family came

to know about this and therefore there used to be dispute, then I had stopped talking to said person on having been made to understand by my own family. I had no talk with the above said person or with any other person for the last 2 ½ years. However, my husband used to quarrel with me and used to taunt me on old episode. I have a shop, I sell clothes and does parlour work and from this I earn my expenses and my family did not give me expenses. On 29.08.2022 my phone was demanded by my son on the basis of suspicion, which was not given and my husband said that why your mother is in their house and we shall throw her forcibly. Then my son Harman Singh and husband Jaswinder Pal Singh quarreled with me. Then on 30.08.2022 my son Harman Singh locked my shop. I begged a lot that my customers are returning, open the shop, but they did not open the shop, and continued quarreling with me. Whenever I fell ill, then I am not served with medicines etc. I do household work, but I am not provided any clothes, etc. from home. Due to this I after being fed up from my son Harman Singh and husband Jaswinder Pal Singh, put petrol upon myself and lit the fire on 30.08.2022 at about 1 noon and tried to finish the life. Kindly take legal action against my husband and my son..”.

3. It is inter alia submitted by learned counsel for the petitioner that the incident had occurred on 30.08.2022 at 1 pm; and the first statement of the deceased was recorded on 30.08.2022 at 11:38 pm (Annexure P1) before the learned Judicial Magistrate, 1st Class (D). It is submitted that the first statement made by the deceased soon after the incident is at variance with the second statement/FIR recorded by her on 31.8.2022. The said statement recorded on 30.08.2022 at 11:38 pm (Annexure P1) before the learned Judicial Magistrate, 1st Class (D), reads as

follows:—

“Stated that there used to be quarrel between me and my husband Jaswinder Pal. I am 46 years old and my husband is 53 years old and he is patient of sugar (diabetics). I am running boutique and selling cloth alongwith it and doing stitching and doing beauty parlor work alongwith it. My husband was having doubt on my character. Due to this we were not having good relations. My husband had become total impotent due to sugar for the last about 6 years and he could not have physical relations with me. Due to this, I had got relations with another person about 2½ years ago. However, now I do not have any relation with him and I had finished my relations with him for the last 2½ years. However, my husband still used to quarrel with me due to this and he used to attach my name with any person and my husband used to poison the minds of my children against me. Yesterday on 29.08.2022 at about 9 p.m., I was making food in the kitchen and I got a message on my mobile phone from a customer, then my husband doubted on it and asked for my phone, but I did not give my phone. On this, my husband locked my shop in anger and he did not handover the key to me inspite of my requests. Being fed up due this, today at about 2 p.m. I put petrol on myself and lit fire in the vacant place behind the shops. This fire I had lit myself and it was not lit by any other person. About 1 year ago we had a dispute and matter was compromised in Police Station Jaito. As per the condition, my husband had to give 1/4th share of his property in my favour and he had to return gold which was given by my parents, which he had sold and he had to return the said amount. However, my husband did not give anything till date. I be given my share and shop be also returned to me”.

4. Learned counsel submits that from a perusal of the above said statement, it is evident that initially the only grievance made by the deceased against the petitioner is that the petitioner had not given

anything to the deceased and she wanted that her share and shop be returned to her. It is contended that the deceased had not even sought any action to be taken against the petitioner. It is submitted that it is only subsequently under the influence of her parents that the deceased had made second improved statement on 31.08.2022 at 2:30 pm before the police, on the basis of which FIR had been registered, in which she had named her son also. It is argued that it is therefore clear that the second statement/FIR was made under the influence of her parents, and not of her own accord. Learned counsel contends that the second statement on the basis of which the FIR has been registered, is motivated as in the first statement, only the petitioner has been named and no action has been sought against him whereas in the second statement, the deceased has even named her son.

5. Learned counsel further states that the deceased had been married to the petitioner for over 23 years and during this period, not a single marital complaint had been made by the deceased against the petitioner. It is submitted that therefore, the petitioner has been falsely implicated in the matter.

6. Learned counsel also refers to the cross-examination of the brother of the deceased namely Lakhvir Singh/PW2 (Annexure P3), wherein he has testified as follows:-

“...Thereafter, Jaswinder Pal Singh came there and put water on Simarjit Kaur and also threw jute bag upon her in order to extinguish the fire. I do not know whether Jaswinder Pal Singh was depositing a sum of Rs.32,000/- per month in the name of my sister in a bank since 2019. Jaswinder Pal Singh invested a

sum of Rs.1 lac in the Rose Relly Company Branch at Faridkot. The said company has also a branch at Bathinda. The said money was not returned to the accused...”.

7. Learned counsel for the petitioner submits that from the above testimony of the brother of the deceased himself, it is clear that the petitioner had tried to save the deceased. In fact, it is the petitioner who had taken the deceased to the hospital after the incident.

8. Learned counsel further states that the material witnesses already stand examined. The petitioner has been in custody for sufficiently long time and therefore, no useful purpose would be served by keeping the petitioner behind bars. It is also submitted that co-accused/son of the petitioner and the deceased has already been released on bail vide order dated 10.04.2023 passed by Co-ordinate Bench of this Court in CRM-M-15414-2023 (Annexure P4).

9. Learned State Counsel files custody certificate dated 23.11.2023 which is taken on record, as per which the petitioner has been in custody as undertrial for a period of 1 year 2 months 22 days. Learned State Counsel opposes the prayer for grant of regular bail to the petitioner and submits that the petitioner had taken the deceased to the hospital only at 6 pm on the date of occurrence i.e. 30.08.2022.

10. Learned counsel for the petitioner vehemently opposes this contention on part of learned State Counsel and submits that the incident in question had occurred at 1 pm on 30.8.2022 and thereafter, firstly the deceased was taken to Adesh Medical College and thereafter, she was taken to CHC Goniana and thereafter she was referred to GGS Medical

College, Faridkot and doctor had made a note at 6:42 pm. It is stated that therefore, there was no delay on part of the petitioner.

11. No other argument is raised on behalf of the parties.
12. I have heard learned counsel for the parties.
13. Without commenting on the merits of the matter, however, keeping in view the totality of the facts and circumstances of the case including the period of custody undergone by the petitioner as undertrial; as also the fact that perusal of custody certificate reveals that there is no other case against the petitioner; and the fact that material witnesses stand examined, the present petition is **allowed**. The petitioner namely Jaswinder Pal Singh s/o Kasturi Lal is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.
14. However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.
15. Pending application(s) if any also stand(s) disposed of.

24.11.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No