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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

210-1

CRM-M-3589-2023
Date of decision : 25.01.2024

Bimlesh Devi

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Karan Pathak, Mr. Saurabh Sharma and
Ms. Mehtab Kamboj, Advocate
for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.0332 dated 24.08.2021, registered for the offences punishable under Sections 120-B, 302 and 307 of IPC, 1860 (Sections 201 and 34 of IPC, 1860 added later on) and Sections 25/54/59 of Amrs Act, 1959 at Police Station Rajendra Park, District Gurugram.
2. The factual aspect of the case as per prosecution as narrated in the report under Section 173 Cr.P.C. reads as under:-

“On dated 24.08.2021 time at around 6.30 A.M. INSP/SHO Parveen Kumar was present in the Police Station that a person came present in Police Station who was carrying one Iron Tomahawk/Sickle in his hand and orally told his name as Rai Singh S/o Late Amilal R/o House No.

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0A-80 near Radha Krishan Mandir Rajendra Park Gurugram and told that he has killed his Daughter-in-law Sunita and his tenant Krishna Tiwari and wife of tenant Anamika and two daughters of tenant Surbhi and Vidhi by hitting them with Iron Tomahawk/Sickle. That upon considering this information as correct above named Rai Singh present was left in Police Station under the supervision of Constable Kirpal 4647/GGM by giving appropriate instructions and Iron Tomahawk/Sickle was also kept by Constable Kirpal 4647/GGM carefully INSP/SHO Parveen Kumar along with him SI Lavkesh 1777/GGM, ASI Subhash 158/GGM, ASI Manjit 2423/FBD, HC Shyampal 173/GGM, HC Surinder 458/GGM, L/PSI Kamlesh, Constable Virender 4558/GGM boarding Government Vehicle, driver Constable Anil 1359 reached the house No. 0A-80 near Radha Krishan Mandir, where in the house at first floor in a room a dead body of a lady was lying and there were injury marks with sharp edged weapon injuries upon the dead were present and INSP/SHO Parveen Kumar along with staff reached second floor of the house then in one room dead body of one person, one lady and one baby is lying upon the dead bodies also marks of sharp edged weapons injuries were present and it has been found that murder has been committed by inflicting injuries with sharp edged weapon and a baby girl aged around 3-4 years who was lying in injured condition in the room upon the bed, who was sent immediately to GH SEC 10 GGM through HC Shyampal 173/GGM in a Government Vehicle driven by Constable ANIL 1359 for treatment and

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information was given to FSL team to reach the spot, after enquiring about the legal heirs of the deceased information of the incidence was given and during that time Ashwani Mishra S/o Ashok Mishra R/o Village Bishanpura Post office Jagdishpura District Siwan Bihar, presently resident of Ghitorni Gram New Delhi came present at the spot. Who identified the dead body of a person lying on the second floor as his Brother-in-law Krishan Tiwari and his wife Anamika Tiwari and daughter Surbhi and identified the dead body lying on the first floor in a room as Sunita Daughter-in-law of the landlord Rai Singh and the complainant Ashwani Mishra submitted a written complaint to INSP/SHO Parveen Kumar, which is as under: -To the SHO Police Station Rajendra Park Gurugram. Sir, I Ashwani Mishra S/o Ashok Mishra R/o Village Bishanpura Post office Jagdishpura District Siwan Bihar. Today I got information from the family of my Brother-in-law Krishna that Krishna Tiwari, his wife Anamika and daughter Surbhi have been murdered in Rajendra Park Gurugram in rented house, upon this information I reached the house of my Brother-in-law at House No. A-80 Rajendra Park Gurugram and on the second floor in a room dead body of my Brother-in-law Krishana Tiwari, his wife Anamika and daughter Surbhi was lying. The dead body of Krishna Tiwari was lying on the floor and dead bodies of Anamika and Surbhi were lying on the bed and I came to know that second daughter of Krishna Tiwari has been sent by the Police in serious condition for treatment at Hospital. My Brother-in-law Krishna Tiwari and wife of my Brother-in-law Anamika along with

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family had come to my house on the occasion of Raksha Bandhan and they had told me that they are having dispute with their landlord Rai Singh and there are injury marks inflicted with sharp edged weapon upon the throat and head of my Brother-in-law Krishna Tiwari and wife Anamika and their daughter Surbhi and lot of blood has oozed out. I have suspicion that landlord Rai Singh has materialized this incident. This incident appears to have taken place today on dated 24.08.2021 in the morning and in the same house at first floor in a room dead body of Daughter-in-law of the landlord Sunita W/o Anand is also lying. Injury marks with sharp edged weapon have also been inflicted upon her. In this incident along with Rai Singh other persons can also be involved, stern legal action may be initiated and FIR may be registered. Whereby case was registered and investigation of the case was conducted by INSP/SHO Parveen Kumar.”

3. FIR was registered on the statement of Ashwani Mishra. Present petitioner Bimlesh is claimed to be part of conspiracy and main accused Rai Singh is claimed to have suffered disclosure stating as under:-

“I retired from Army. My son is Anand Yadav, whose wife is Sunita Devi. I alongwith my wife Bimlesh, my son Anand Yadav, my daughter-in-law Sunita and my granddaughter Yashaswi live together on first floor of our house. Krishna Tiwari son of Vyas Tiwari, resident of Village Barka Manjha, P.S. Mairva, District Siwan, Bihar alongwith his wife Anamika, two daughters Surbhi and Vidhi had been living on rent in two rooms on the second floor of our house for the last about 2½

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years. My daughter-in-law Sunita and tenant Krishna Tiwari had illicit relations with each other. On the said issue, I and my wife Bimles tried to make my daughter-in-law and tenant Krishna Tiwari understand many times that it is not a good thing. But both of them did not mend their ways. Krishna Tiwari had also not given our rent for about 8-9 months. I and my wife asked Krishna Tiwari many times to pay the due rent and to vacate our house. But neither Krishna Tiwari had been paying the due rent nor vacating our house. Further, Krishna Tiwari had not mended his ways. At this, I and my wife in connivance with each other hatched a conspiracy about a week ago to kill our tenant and daughter-in-law Sunita, both by causing injury with iron Farsa/Darat and further, alongwith them, why not we would also kill Krishna Tiwari's wife and his both daughters, so that no one would be there to complain about the matter against us. Accordingly, as per our conspiracy, I brought an iron Farsa/Darat and got it sharpened through a cycle street hawker. Yesterday night, we both again hatched conspiracy that when our daughter-in-law, Krishna Tiwari and his family would go to sleep then I will kill all of them by giving injury with Farsa/Darat and my wife will stand at the door, so that no one would rush outside and if anyone out of them tries to rush outside, then my wife would caught hold of that person. Accordingly, as per our pre-planned conspiracy at about 02:30 AM, when our daughter-in-law Sunita was sleeping in her room, we got the door of room opened and on the opening of door, I continuously gave blows with Farsa/Darat on the head, neck, face and on hands of my daughter-in-

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law Sunita and my wife was standing at the door, so that Sunita could not run outside. Due to suffering injuries, she fell on the bed and then she fell on the floor of the room. When we saw that Sunita is dead, then we both went to second floor for killing Krishna and his family. Door of Krishna Tiwari was closed. By pushing the door, we broke the bolt of the door and opened it. I hit continuous blows of iron Farsa/Darat carrying in my hand on the head, neck of Krishna Tiwari, who was sleeping on the bed. Due to suffering injuries, he fell down on the floor. Then I also gave continuous blows of iron Farsa/Darat on head and neck of Krishna Tiwari's wife Anamika and his both daughters Surbhi and Vidhi, who were sleeping on the bed with him. During this, my wife was standing at the door, so that nobody could rush outside. Then we saw that they all four were dead. We came down. During said occurrence, there were blood stains of Sunita, Krishna Tiwari, Anamika, Vidhi and Surbhi on wearing clothes of me and my wife. Then my wife kept hidden the wearing clothes in iron almirah and I washed my wearing clothes in bathroom and we both took a bath. I by accompanying with you can get effected the recovery of clothes wearing at the time of occurrence from the bathroom of my residential house and further, I can get the identification of place of occurrence in both rooms at our home and further, the diary in which I have written the accounts of due rent of our tenant Krishna Tiwari, I can also get the same recovered from the room of my residential house. I have already got effected the recovery of iron Farsa/Darat used during

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occurrence.”

4. Counsel for the petitioner contends that allegation against the petitioner is of having one of the conspirators. The role assigned to the petitioner is of standing on the door to make it sure that no one rushes outside. Counsel for the petitioner submits that petitioner is behind bars since date of arrest i.e. 24.08.2021 and by now has suffered incarceration for the more than 02 years and 05 months. Out of 57 cited witnesses, only 09 have been examined by now. The trial is not likely to conclude the in the near future. Custody of the petitioner cannot be prolonged as a punitive measure.

5. *Per contra*, counsel for the complainant submits that there is evidence with respect to the petitioner having participated actively. He submits that grand daughter of the petitioner namely Yashasvi Rao deposed that she was held by her grandmother at the time of occurrence, but deliberately she has not been joined as eye witness by the prosecution to aid the culprits. He insists that the counselling report of Yashasvi Rao be read and submits that even though it is not part of challan, but the same has been placed on record by him in the petition filed before this Court seeking further investigation of the case. The case history as noticed in counselling report reads as under:-

“She belongs from Rajendra Park, Gurgaon. Currently, she has been living with her material uncle’s family. She shared that in August, 2021 her mother was murdered in her home. I asked her whether she was at home, when the incident happened. She then narrated the whole incident.

She shared that the night of the incident she was sleeping with her grandfather and around

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2-2:30 am her grand father woke her up and said her that her mother is calling her. Her mother's room was locked from inside. She knocked the door, her mother opened it and grandfather went inside her mother's room. He slapped her mother, meanwhile her grandmother came and took the girl with her. The child also saw her father and one of the tenant named Kaari standing in the room next to her mother's room. The girls had listened the scream of her mother but her grandmother didn't let her go out. Her grandfather then came and asked her to not tell anything to anyone, and he then locked her & her grandmother in the room. Her grandfather also asked her grandmother is there any stains of blood on his shirt.

In the morning, when police came she & her grandmother were in the locked room to make it look like they were locked in the room whole night. She also shared one more important information that two days prior to her mother's murder, her father threatened her to not share any kind of information with anyone if anything happened otherwise he will send her to boarding. The next morning of the incident, her paternal aunt (bua also asked her to not go with her maama. Since then she has been living with her maama.”

6. PW-3 Vidhi the surviving member of the Tiwari family testified before the Court wherein she also narrated that it was the grandfather i.e. Jai Chand who assaulted them with the knife. Statement of PW-3 Vidhi reads as under:-

“xx xx xx

From the spontaneous reply given by girl child, it seems that she is aware of the things

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happening around her and, therefore, is competent to depose as a witness.

I was living with father Krishan, mother Anamkia and sister Surbhi at Rajendra Park, Gurugram. I used to play with a girl Yashu, daughter of uncle of owner of house. Yashu was having her grandmother and grandfather. My father, my mother, my sister and me were assaulted with a knife by grandfather of Yashu and grandmother of Yashu was standing near the gate of the room. My father became unconscious and my mother died on the spot and she was having injuries on her hand. My sister Surbhi was also died on the spot as she was also assaulted with knife by grandfather of Yashu. I had also received injuries from knife on my hand and neck. Grandfather of Yashu, after assaulting us, had gone to police station. Grandmother of Yashu had also attended my birthday and I know her. Grandmother of Yashu is present in the court today.

At the time of a sleeping. Voluntarily stated that I had seen grandfather of Yashu while assaulting my parents and sister. At the time of assault, we all were awake. I cannot tell number of rooms which we have taken on rent. Voluntarily stated that we used to sleep in a room and there was kitchen also. Incident took place in the night. There was one double bed in the room. Seff stated that I along with my sister used to sleep in one room and my parents and to sleep in another room. Both rooms were adjacent to each other.

Q Whether you remained conscious after sustaining injuries?

(Court enquired about the state of

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consciousness and unconsciousness and child witness is not able to distinguish between both, so the question is disallowed).

After sustaining injuries, I was taken to hospital by one Golu bhaiya (cousin). Before I was taken to hospital, I was awake.

Q Can you tell approximately after what time gap Golu bhaiya had come?

(Court enquired about the description of time but the witness is not able to explain due to her tender age, so the question is disallowed)

Golu bhaiya had come in the night time. It was Shalu bhaiya, who took me to the hospital. At the time of taking me to the hospital, grandfather and grandmother of Yashu were present at home. [on enquiry from court, it was found that Golu bhaiya and Shalu bhaiya are two different persons and named as Subhodh Tiwari (Golu Bhaiya) and Saurabh Tiwari (Shalu Bhaiya)). I had narrated the whole incident firstly to Golu Bhaiya.

Q: Were you ever taken before any police official for narrating the incident or the facts disclosed above at any point of time before today for recording your statement”

(On enquiry from the witness, it was found that witness is able to distinguish between the police officials and other persons including Advocates and staff members, available in the court)

Ans. I was never taken to the police for my statement at any point of time.

I can not tell where I was taken after treatment from hospital. Voluntarily stated that I went to my grandfather's village firstly. Now I am

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residing with my aunt (Mosi Anupama Mishra) at Lucknow. Today, I have come from Lucknow.

Q: Did you come to Gurugram after being discharged from hospital, till date? Question disallowed, in view of the tender age of witness).

On the asking of my aunt (Mosi), I have come to the court today.

Q: Who informed to you about the purpose of visiting the Court today?

(Question disallowed, in view of the tender age of witness).

Q: Whether the family members including Shalu bhaiya, Golu bhaiya, Mosi or anyone ever enquired about the facts of the incident from you during your stay with them or not?

(Question being complicated is disallowed, in view of the tender age of witness).

Q: Were you ever informed by anyone in the family that police has recorded your statement and you are required to give the same statement in the court?

(Question being technical in nature and being complicated is disallowed, in view of the tender age of witness).

Q: Were your mother or father talking or breathing after sustaining injuries?

Ans. My parents were talking after sustaining injuries.

Q: Can you tell for how long time, the grandfather of Yashu remained inside your rented floor?

Q: Did you ever inform the sequence of events as narrated by you today, previously to someone?

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(Question disallowed being complicated).

Q: Were you ever informed by anyone to give the statement in the court as disclosed by you in the court today?

(Question disallowed being complicated, in view of her tender age).

Q: Is it correct that the accused was never involved in the incident and you have been tutored to name her in the court by your family members or that accused has been wrongly pointed out by me with the fabricated allegations against her under the influence and tutoring of the family members.

(Question disallowed being complicated, in view of her tender age)."

7. *Per contra*, State counsel submits that it is a case of grew some incident in which 04 precious lives were lost and the culprit Jai Chand himself committed suicide while in police custody. The incident was result of a conspiracy between the present petitioner, her husband and her son and thus she does not deserve to be released on bail.

8. I have heard counsel for the parties and have gone through the records of the case.

9. The incident narrates gory tale. The role assigned to the petitioner is of having conspired with the main accused Rai Singh. However, there is no evidence to demonstrate prior meetings of mind. Apart therefrom, no overt act has been attributed to the present petitioner.

10. Keeping in view that the petitioner is of 60 years old woman and the mandate of Section 437(1) proviso, the observation made in Supreme Court in ***Satender Kumar Antil v. Central Bureau of***

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Investigation, 2022 (10) SCC 51, the incarceration suffered by the petitioner and the stage of trial wherein only 09 out of 57 cited witnesses could be examined by now, the present petition is allowed. Petitioner is ordered to be released on regular bail on her furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

11. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

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Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No