

CRM-M-28308 of 2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-28308 of 2024

DATE OF DECISION :- 03.07.2024

Raja @ Rajo Devi

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Bhupinder Malik, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

SUMEET GOEL, 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.0438 dated 12.09.2023, registered for the offences punishable under Sections 120-B,304-B,406,498-A of IPC at Police Station Kurukshetra University Kurukshetra, District Kurukshetra.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

*"12. : First Information contents :**Application is reproduced here as follows:**"To**The Station House Officer**Police Station K.U.K. District Kurukshetra.**Subject: Application for taking legal action against accused: 1. Deepak Kumar son of Mahesh Kumar, 2. Mahesh Kumar son of Khazana Jogi, 3. Raja wife Mahesh Kumar 4. Rahul son of Mahesh Kumar resident of village Hathira police station Kurukshetra 5. Manju w/o unknown, daughter of Mahesh Kumar Jogi. 6. Meena wife of unknown daughter of Mahesh Kumar 7. Neelam wife of unknown daughter of Mahesh Kumar.*



Sir,

The applicant is making following request that:-

- 1. I, Ajay Kumar son of Ashok Kumar, a permanent resident of village Singpura police station, Kurukshetra, am an iron Almira maker by profession. That the applicant got marriage of her younger sister Komal solemnised with the accused No.1 as per Hindu customs on dated 18.05.2022. The applicant's father used to be ill and I had given sufficient dowry articles at the time of marriage.*
- 2. That above-mentioned accused started taunting the applicant's sister about bringing less dowry and the accused No.1, 2 and 3 used to confine her in a room after beating and keeping her hungry and thirsty and used to threaten her sister that if she did not fulfill their demand of dowry, they would kill her by starvation and thirst.*
- 3. That in November 2022, the applicant's sister telephonically called applicant from the phone of accused No. 1 and said that brother, save me, otherwise they will kill me. They are demanding Rs. 5 lakhs from me. Then, the applicant assured his sister and said that I would come to your in-laws' house today itself and would talk to the above-mentioned accused. Then, the applicant along with his uncle's son Praveen Kumar son of Prem Chand, Rajesh son of Mangu resident of village Singpura Kurukshetra and Champa Devi wife Mam Chand resident of village Hathira Kurukshetra went to the house of the accused on dated 21.11.2022. At that time, accused No. 1, 2 and 3 were present at home. Then, the applicant folded his hands in front of 1, 2 and 3 and said that I had taken loan for the purpose of marriage of her sister. If you harass my sister for dowry, I would have to take more loan to give you. Then, the accused No.1 said that give Rs 5 lakhs in cash to us. We would never harass your sister in future. The Panchayat people who accompanied the applicant said that the applicant did not have that much status. He is already in debt, but the accused No. 1, 2 and 3 remained adamant on their dowry demand of Rs.5 lakh. Then the applicant asked for a few months'*



time from the accused and said that I would arrange the money, you settle my sister in your house.

4. That it is that in February 2023, when the applicant's sister was sleeping in her room, the above-mentioned accused entered her sister's room and asked her to call her brother and demand Rs. 5 lakhs from him. When the applicant's sister expressed her disagreement on doing this, then, the applicant's sister was beaten up by the above accused and thrown out of the house and the accused No.1 telephonically called on the applicant's phone from his phone and said that until and unless the applicant fulfills their dowry demand of Rs.5 lakhs, till then, we would not allow your sister to enter the house.

5. That it is said that in March 2023, after borrowing one lakh rupees from her cousin Sunita D/o Maya Prakash, resident of Dhand Kaithal, the applicant reached to the house of the accused with Meham Singh son of Raja Ram, resident of village Malikpur-Singapura and his cousin Praveen Kumar son of Prem Chand, resident of village Singapura, Kurukshetra, and told them with folded hands that he could arrange only Rs.1 lakh. Then, the applicant gave that 1 Lakh rupees to the accused No. 1, 2 and 3, in the presence of Praveen and Meham on dated 13.03.2023 and the applicant folded his hands to the accused and said that now settle my sister because now, I have nothing to give. On dated 14.03.2023, the applicant dropped his sister back at the accused's house.

6. That on dated 30.08.2023, accused No. 5, 6 and 7 started demanding gold earrings from the sister of the applicant and said that your hungry and poor family members have not given anything to us. Tell your brother to get the earrings prepared for us and give on the day of Janmashtami. When the applicant's sister said that my brother has nothing to give now, then the accused No. 1, 5, 6 and 7 slapped and punched the applicant's sister and said that we would not allow you to stay in this house until and unless you give us the earrings and the remaining dowry amount of Rs.4 lakhs. Then, the applicant took her sister with him to her in-laws' house on 08.09.2023 and folded his hands in front of accused



No.1, 2, 3 and 5 and said that I would fulfill your dowry demand of Rs.4 lakhs and would also make earrings for you. Give me a few days' time and on the same day, the applicant dropped his sister at her in-laws house.

7. That yesterday, on dated 11.09.2023 at around 8 o'clock, the applicant received a phone call on the applicant's phone No.9991410679 from phone No.9306153200 of accused No.1 that we all have finished your sister. You have not fulfilled even a single demand of dowry. Now, come and take away your sister's dead body. The above-mentioned accused have killed the applicant's sister for dowry. It is requested to sir that keeping in view the above facts, strictest legal action should be taken against all the accused and the applicant should be given justice for the death of his sister. Sir, I would be obliged.

Applicant -Sd-Ajay Kumar son of Ashok Kumar resident of village Singpura, police station K.U.K. District Kurukshetra. Mobile No. 99914- 10679.”

Action taken by police: that on dated 11.09.2023 at around 8.45 PM, P/SI Prince, ASI Praveen Kumari no. 830/KKR with HC Baljinder No. 169/KKR with HC Randhir No. 987/KKR was present at the police station. Through telephone, information was received through dial 112 that in village Hathira, a married girl Komal, wife of Deepak Kumar resident of Hathira, has ended her life by hanging herself. I/O was sent on the spot, on the information of which PSI Prince with fellow employees reached on the spot of incident, village Hathira. The 'scene of crime team' was informed through telephone to reach the spot of incident, village Hathira. The dead body of the deceased Komal was inspected on the spot and PSI Prince took photographs of the incident spot on his mobile and by arranging for a private vehicle, the dead body of the deceased Komal was kept safe in the mortuary house of LNJP Hospital, Kurukshetra. On dated 12.09.2023, PSI Prince HC Randhir Singh No. 987/KKR was present at the mortuary house of LNJP Hospital, Kurukshetra. That Ajay Kumar, brother of the above-mentioned the deceased Komal, son of Ashok Kumar, resident of village Singhpura police



station K.U. District Kurukshetra met PSI Prince and presented the above application. In view of the above application, prima facie, crime under section 304B, 120B IPC is made out. Therefore, an FIR No.438 dated 12.09.2023, Section 304B, 120B IPC was got registered in Police Station K.U.K. district Kurukshetra. This case has been registered in the presence of SI Subhash Chander 155."

13. Action taken: Since the above information reveals commission of offence(s) u/s as mentioned at Item No.2

(1) Registered the case and took up the investigation or

(2) Directed (Name of I.O.) Prince Rank: SI (Sub-Inspector) to take up the investigation.

(3) Refused investigation due to: OR

(4) Transferred to P.S. District: on the point of jurisdiction.

F.I.R. read over to the complainant/informant admitted to be correctly recorded and a copy given to the complainant/informant free of cost."

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 12.09.2023. Learned counsel for the petitioner has further argued that the petitioner has been falsely implicated into the FIR in question and she has no active role to play in the commission of offence as alleged by the prosecution. In this view of the matter, learned counsel has prayed for grant of regular bail.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail. Learned State counsel seeks to place on record custody certificate dated 02.07.2024 in Court, which is taken on record.

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



6. The petitioner was arrested on 12.09.2023 whereinafter investigation was carried out and challan stands presented on 11.12.2023. Total 20 prosecution witnesses have been cited out of which 05 stands examined & hence culmination of the trial will take its own time. The rival contention of learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question and as to the specific role attributed to the petitioner resulting into culpability; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. The petitioner can, of course, be considered in terms of proviso to Section 437 of Cr.P.C. It would be apposite to refer herein to the dicta of a judgment passed by this Court in the case of ***Ravinder Kaur vs. State of Punjab (CRM-M-11503-2024)***, while relying upon the dicta of a judgment of the Hon'ble Supreme Court in a case of ***Satender Kumar Antil Vs. Central Bureau of Investigation & Anr., 2022(10) SCC 51***, has granted the concession of regular bail to the petitioner therein, relevant thereof reads as under:

“51. Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the accused person is sick or infirm. In a case pertaining to women, the court is expected to show some sensitivity. We have already taken note of the fact that many women who commit cognizable offenses are poor and illiterate. In many cases, upon being young they have children to take care of, and there are many instances when the children are to live in prisons. The statistics would show that more than 1000 children are living in prisons along with their mothers. This is an



aspect that the courts are expected to take note of as it would not only involve the interest of the accused, but also the children who are not expected to get exposed to the prisons. There is a grave danger of their being inherited not only with poverty but with crime as well.

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58. Section 437 of the Code empowers the Magistrate to deal with all the offenses while considering an application for bail with the exception of an offense punishable either with life imprisonment or death triable exclusively by the Court of Sessions. The first proviso facilitates a court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm, as discussed earlier. This being a welfare legislation, though introduced by way of a proviso, has to be applied while considering release on bail either by the Court of Sessions or the High Court, as the case may be. The power under Section 439 of the Code is exercised against an order rejecting an application for bail and against an offence exclusively decided by the Court of Sessions. There cannot be a divided application of proviso to Section 437, while exercising the power under Section 439. While dealing with a welfare legislation, a purposive interpretation giving the benefit to the needy person being the intendment is the role required to be played by the court. We do not wish to state that this proviso has to be considered favourably in all cases as the application depends upon the facts and circumstances contained therein. What is required is the consideration per se by the court of this proviso among other factors.”



Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence. As per custody certificate dated 02.07.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of more than 9 months & is not shown to be involved in any other case.

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of above, 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. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent herself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit her passport, if any, with the trial Court.
- (vi) The petitioner shall give her cell-phone number to the Investigating Officer/SHO of concerned Police Station and shall not change her cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed



hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.
10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

03.07.2024
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No