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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41328-2023
DECIDED ON: 16.09.2024

RAHUL

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Chahit Bansal, Advocate for
Mr. Pardhuman Garg, Advocate for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The instant petition has been preferred under section 439 Cr.P.C. for grant of regular bail in FIR No. 510 dated 29.08.2021 under section 302,307,316, 34 of the Indian Penal Code, 1860 registered at the Police Station, Kundli, Sonipat (Annexure P-1)

The narrated facts as per the FIR in this case is as reproduced below:

“Statement of Complainant D/O Ashok caste chamar R/o UN, District Shamli W/o Rahul R/O Pyau Maniyari Kundli Age 20 Years 8076175760, 977366075. It is noted that I am a resident of the above address. For almost 2 years, I was living with Rahul as husband and wife, who was troubling and harassing me for many days, now I am pregnant and Rahul's mother always used to say that I will get this child killed, and at around 1 o'clock when I was in my room Rahul poured oil on me and set fire to my clothes with the intention of killing me, to which I

got burnt, and Rahul tried to kill me by setting me on fire at the behest of his mother. Legal action should be taken against both of them.”

2. Contention

On behalf of the Petitioners

The Counsel for the Petitioner contends that the present petitioner has not committed any offence as averred in the instant FIR and has been falsely impleaded in the same, and it was actually the present petitioner who tried to save her life when she tried to commit suicide by burning herself in lieu to her conflict with her mother-in-law who is the mother of the present petitioner, who himself has suffered burn injuries while saving her from committing the abominable act of suicide. Learned Counsel adds that the evidence against the petitioner is merely circumstantial and no direct evidence of any kind is unearthed in this case as challan in the this case stand presented meaning thereby investigation is complete, also the charges stand framed by the Trial court, Sonipat .

The learned counsel submits that the present petitioner was taken into custody on 28.02.2022 and has been in judicial custody since, and nothing is to be recovered from the present petitioner. Also, the present case is based upon the documentary evidence only and culpability would be determined in due course of the trial, therefore the custodial interrogation of the present petitioner is not required. He fairly adds that the present petitioner had applied for the grant of concession of regular bail before the Addl. Sessions Judge, Sonipat which was dismissed vide order dated 26.07.2023 (Annexure P-2).

On behalf of the State

The learned Counsel for the State apprises the Court to the fact that the deceased was pregnant at the time of the incident, post-which she was admitted to Safardjang Hospital, Delhi whereby, during the treatment, her pregnancy was aborted at the night of 30.08.2021 and she succumbed to her injuries. The post-mortem was conducted (Annexure R-2) wherein it was stated that total burnt area involves about 95% of the total body surface area and cause of death in the present case was opined to be septicaemia as a result of ante-mortem inflicted thermal flame burns involving 95% of total body surface area. He further asserts that the present petitioner and the deceased were living as Husband and wife since last 2 years but were having quarrels since past several days, whereby the present petitioner was harassing the deceased. And as per the dying declaration (Annexure R-1) of the deceased, as recorded before the Executive Magistrate it is pertinent to apprise the court that since 4-5 days prior to the incident the petitioner was harassing the deceased and the mother of the present petitioner used to state, to kill her child and in furtherance of the same the petitioner with the intention to kill set the deceased ablaze.

The learned Counsel lastly, submits that the deceased got recorded her dying declaration(Annexure R-1) before the Executive Magistrate on 31.08.2021, wherein she has held the present petitioner wholly and solely responsible for the entirety of the incident. And on the basis of afore-stated averments seeks the dismissal of the instant petition under 439 CrPC seeking the grant of concession of regular bail.

3. Analysis

This court cannot fail to espy the important circumstance as deliberated in the two-judge Bench decision of this Court in **Ram Govind Upadhyay v. Sudharshan Singh (2002) 3 SCC 598** the nature of the crime was recorded as "**one of the basic considerations**" which has a bearing on the grant or denial of the concession of bail. The considerations which govern the grant of bail were elucidated in the judgment of the Apex Court without attaching an exhaustive nature or character to them. This emerges from the following extract:

"4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the

prosecution, in the normal course of events, the accused is entitled to an order of bail.”

The Apex Court further laid down the standard for overturning an order granting bail in the following terms:

"3. Grant of bail though being a discretionary order -- but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained.”

The Apex court further elucidated the principles governing the grant of concession of bail as reiterated by a two judge Bench in the case as titled **“Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496”** reproduced herein-below:

"9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- 1.whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- 2.nature and gravity of the accusation;*
- 3.severity of the punishment in the event of conviction;*
- 4.danger of the accused absconding or fleeing, if released on bail;*
- 5.character, behaviour, means, position and standing of the accused;*
- 6.likelihood of the offence being repeated;*

7.(vii) reasonable apprehension of the witnesses being influenced; and

8.(viii) danger, of course, of justice being thwarted by grant of bail.

9.[internal citation omitted]”

The Apex court to crystallise the the power to set aside an order wherein the concession of bail has been granted, explicated and held:

"10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal..."

This Court is conscious of the fact as narrated in the dying declaration of the deceased that she was the wife of Rahul and was residing with him for the past two years, but for the last several days Rahul was harassing her as she was pregnant and they used to quarrel and he beat her and pressurized her to go her parental home as he will not be able to afford this child also the mother of Rahul used to state to kill the child. It is further stated therein that Rahul poured oil upon her with an intention to kill her and set her clothes on fire due to which she got burnt. The deceased further stated that when she raised alarm one Guddu came there and after extinguishing fire got her admitted to the hospital from where she was referred to Safdarjang Hospital, Delhi where her pregnancy got miscarriaged in the night of 30.08.2021.

This Court keeping in view the afore-stated narration of dying declaration and also the afore-mentioned settled principle of law is of the opinion that any orders as passed by the High Court for granting the concession of bail, must pass the muster under the law and not be oblivious

to, and innocent of, the nature and gravity of the alleged offences and to the severity of the punishment in the event of conviction.

4. Decision

This court taking a note of the luminary vision of the Apex court pertaining to the grant of the concession of regular bail is of the considered view that the instant petition deserves to be dismissed for the reasons discussed herein-above.

Accordingly, the present petition stands dismissed in aforesaid terms.

16.09.2024
anuradha(P)

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>