



CRM-M-46914-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-46914-2024 (O&M)

Date of Decision: 25.09.2024

Ramesh @ Mahesh Kumar

.. Petitioner

Vs.

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

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

Ms. Priyanka Sadar, AAG, Haryana.

...

**SUMEET GOEL, J. (Oral)**

1. Present petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No.438 dated 12.09.2023, registered for the offences punishable under Sections 120-B, 304-B, 406 and 498-A of IPC at Police Station Kurukshetra University, Kurukshetra.

2. The FIR in question (as stated in the petition) reads as under:-

*“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. 1, 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*

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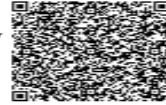
*and 3 used to confine her in a room after beating and keeping her hungry and thirsty and used to threaten her sister that if she did not fulfill their demand of dowry, they would kill her by starvation and thirst.*

*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 Dio 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*

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*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."*

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 12.09.2023. It has been further submitted by the learned counsel for the petitioner that the offence under Section 304-B of IPC has been invoked without any sufficient proof available on record in this regard, as no complaint was ever made by the victim or her family before her death and hence the case under Section 304-B of IPC is not made out against the petitioner. Learned counsel for the petitioner has further submitted that the complainant-side has only resorted to oral allegations to substantiate their case; the petitioner (herein) is the father-in-law of the deceased and there are no specific allegations levelled against him. Learned counsel for the petitioner has further submitted that there is no evidence, much less substantial evidence, brought on record by the prosecution to prove the guilt of the petitioner. It has been further submitted that one of the co-accused (petitioner's wife) was granted the concession of bail by this Hon'ble Court vide order dated 03.07.2024 (Annexure P-2) and the case of the petitioner stands at same footing as that of the co-accused (petitioner's wife) who was granted bail vide abovesaid order. Therefore, the petitioner deserves the

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concession of bail on the grounds of parity also. Thus, regular bail is prayed for.

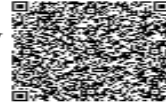
4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

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

6. It is pertinent to note herein that the petition in hand is the second regular bail petition preferred on behalf of the petitioner. The first petition for grant of regular bail by the petitioner (herein) was dismissed as withdrawn vide order dated 09.05.2024 wherein the following order was passed:

- “1. After arguing for some time, learned counsel for the petitioner seeks to withdraw the present petition.*
- 2. Dismissed as withdrawn.*
- 3. The concerned trial Court is directed to expedite the trial and conclude the same preferably within a period of six months from the date of receipt/production of certified copy of this order.*
- 4. Since the main case has been decided, pending application(s), if any, shall also stands disposed off.”*

7. The petitioner was arrested on 12.09.2023, whereinafter investigation was carried out and challan was presented on 11.12.2023, thereafter the charges were framed by the trial Court against accused persons including, the present petitioner, under sections as have been enumerated in the FIR. Earlier petition for grant of regular bail, presented by the petitioner was dismissed as withdrawn on 09.05.2024, and thereafter this present petition has been filed. There is no explanation forthcoming as to what is the change in circumstances, since the dismissal of the earlier (first) petition vide order dated 09.05.2024, which necessitated the filing of the present petition. In this regard, reference may be made to a judgment

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passed by this Hon'ble Court in the case of '**Rafiq Khan Vs. State of Haryana and another**', has held as follows:

*Analysis (re law)*

9. The paramount issue, in any plea for grant of regular bail, is the liberty of an individual. Indubitably, within our society and jurisprudence, liberty is a cherished foundational principle and has fundamental ascendancy over all other attributes of social order. Even within the framework of Constitution, this principle is made conspicuous, inter alia, in Article 21 of our Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. The Cr.P.C., 1973 is one such procedural law which permits curtailment of liberty of anti-social and anti-national elements. Yet, liberty of an individual, the accused, must not transgress the rights of another individual, the victim, in terms of right to dignified everyday life without any imminent fear or threat. Additionally, the rights of the collective of individuals viz. the State/Society at large, also cannot be neglected. Therefore, while countenancing the facts for considering the bail, the rights of the triad of accused, victim and the State (Society at large) ought to be entailed. Ergo, while considering a bail plea, the Court ought to take into account this core concept(s).

9.1 An analytical perusal of Cr.P.C. explicates that this statute does not contain any provision relatable to maintainability or otherwise of second/successive bail petitions, including one(s) seeking regular bail. Once there is no statutory prohibition provided for in law, a Court is not logically empowered to import into it such prohibitions, especially in case of codified and legislated law. It is trite law that Courts ought not to read a provision in codified law which has not been specifically provided for by the legislature especially when such reading results into deprivation of rights. The bar contained in Section 362 of Cr.P.C. can, by no stretch of legal imagination, be said to be barring the filing of second/successive regular bail petition.

9.2 The Hon'ble Supreme Court in case of Babu Singh case (supra) has held that rejection of a bail petition does not, by itself, forbid a Court from considering another one, later in point of time. Similar is the ratio decidendi of the judgment of Hon'ble Supreme Court in Kalyan Chandra Sarkar (supra). Ergo, it can be safely inferred that the decision of a Court qua regular bail petition is essentially an interlocutory order and hence the postulation of res judicata does not apply to its realm.

9.3 The issue that next craves attention is as to what are the factors/parameters for consideration of second/successive regular bail petition(s).

9.4. The concordant legal position is that the essential pre-requisite for consideration of second/successive regular petition is the material/substantial change in circumstances and factors of alike nature. Indubitably, the further period of incarceration suffered by the petitioner accused after rejection/withdrawal of first/earlier plea for bail, pace of trial, the witnesses turning hostile or not supporting prosecution case and changed medical condition(s) of accused would be pertinent factor(s). It goes without saying that these factors are only illustrative in nature and cannot by any means be said to be exhaustive.

9.5 No rigid or universal criterion can possibly be delineated to conclusively govern the exercise of judicial discretion, in determining, as to what would constitute as the above stated substantial change in circumstances. Factual flexibility, one additional or different fact, may cause a sea of difference. There is no gainsaying that each case has its own distinct and unique facts and, hence, exercise of such judicial power

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*is best left to the judicial discretion of a Court, in accordance with the settled norms of our jurisprudence.*

*10. As an epilogue to the above discussion, the following principles emerge:*

*I Second/successive regular bail petition(s) filed is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.*

*II. Such second/successive regular bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.*

*III For the second/successive regular bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice. The metaphoric expression of seeking second/successive bail plea(s) ought not be abstracted into literal iterations of petition(s) without substantial, effective and consequential change in circumstances.*

*IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Making such an attempt is nothing but an utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive regular bail petition(s).*

*V In case a Court chooses to grant second/successive regular bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.”*

Thus, it is a settled law that the entertainment of successive bail petitions is contingent upon the petitioner demonstrating a palpable change in circumstances subsequent to the dismissal of the earlier petition. The petitioner bears the onerous burden of establishing substantial and compelling grounds, including novel evidence, altered circumstances or fresh development that were not considered previously. Mere iteration of identical grounds or arguments, *sans* novelty or material distinction, is insufficient. In the present case, except the factum of further incarceration of around 4½ months, no substantial change in circumstances is forthcoming either from the averments made in the petition or the arguments advanced by the learned counsel for the petitioner. Undergoing further incarceration of around 4½ months cannot be said to be a substantial

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change in circumstances, especially, in the light of the fact that the offence with which the petitioner has been charged with (i.e. Section 304-B of IPC etc.) and is being tried, is punishable with imprisonment which may extend upto '*imprisonment for life*' and the total period, including this period of around 4½ months, for which the petitioner has been in custody in the present case is just above 1 year only. The submission made by the learned counsel for the petitioner that no dowry related complaint against the in-laws was ever made by the deceased or complainant, prior to this present FIR, was also available at the time of hearing of earlier bail petition. Thus, the petitioner has failed to discharge this burden of showing change in circumstances, which in itself is sufficient to invite the inevitable dismissal of the present petition.

8. Moreover, on a specific inquiry being made in this regard, learned counsel for the petitioner has conceded that the trial of the case is progressing at an appropriate pace and the case is at the stage of prosecution evidence. This fact further solidifies the conclusion arrived at by this Court that further incarceration of around 4½ months cannot be said to be a substantial change in circumstances, in the facts and circumstances of the present case.

9. Furthermore, the contention advanced by the learned counsel for the petitioner, that the present petitioner stands at parity with the co-accused (wife of present petitioner), namely, Raja @ Rajo Devi, who was granted the relief of regular bail by this Court vide order dated 03.07.2024, is not well placed. As is decipherable from the bare perusal of above-said order dated 03.07.2024 (Annexure P-2), the bail petition of Raja @ Rajo



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acceded to by the legislature for women in the form of proviso to Section 437 of Cr.P.C. and dicta passed by this Hon’ble Court in the case of *Ravinder Kaur Vs. State of Punjab (CRM-M-11503-2024)*.

10. In view of the above, no cause is made out to entertain the instant petition (second regular bail petition) preferred on behalf of the petitioner. Hence, the petition is dismissed.
11. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

25.09.2024  
Jasmine Kaur

(SUMEET GOEL)  
JUDGE

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|---------------------------|-----|----|
| Whether speaking/reasoned | Yes | No |
| Whether reportable        | Yes | No |