

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48088-2024
Reserved on: 07.11.2024
Pronounced on: __.11.2024

Rekha ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sandeep Saini, Advocate
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
16	06.02.2021	Julkan, District Patiala	302/34/201 IPC

1. A woman in custody for three years and nine months, in the FIR captioned above had come up before this Court under Section 439, 1973, seeking regular bail.
2. In paragraph 12 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the status report filed by the State, which reads as follows:

“3. That the brief facts of the present case/FIR No. 0016 (supra) are that pron 05.02.2021, a phone call was received from Dr. Veenu at 10 PM that dead body of Raj Kumar had come. Upon the receipt of information, Insp. Harmanpreet Singh alongwith ASI Kuldeep Singh, ASI Harwinder Singh, ASI Sarabjit Singh, PHG Jasmer Singh, PHG Harmesh Singh and PHG Hakam Singh reached at Rajindra Hospital Patiala, wherein, sons of deceased namely Gurjeet Singh (complainant) and Vicky Singh met with the police party and Gurjeet Singh recorded his statement to the effect that on 05.02.2021 at about 11 AM, his father Raj Kumar (since deceased) had gone to water their fields in village Sadhu Nagar. At about 5 PM, he received a phone call that his father was given beatings by Kehar Puri, Kehar Gir, Harjit Singh, Gursewak Singh, Rekha Rani (present petitioner) and Aman. Upon which, complainant alongwith his brother Vicky Singh reached at the spot and saw that his father was thrown in their land near the house of Gursewak Singh. Rekha Rani (petitioner) was holding a brick, Kehar Gir had caught hold of testicles of his father, Kehar Puri, Harjit Singh, Gursewak Singh and Aman were giving him fist

blows. When the complainant and his brother raised alarm, the said persons left from the spot and the complainant and his brother saw that their father Raj Kumar (since deceased) was bleeding from his head. Subsequently, he and his brother took their father of Rajindra Hospital Patiala, wherein the concerned doctor declared him dead. The complainant further stated that reason of enmity was that there was already an ongoing dispute regarding their land and trees, due to which, the aforesaid persons gave beatings to his father, due to which, he died. Hence, the present case/FIR was registered against aforementioned Kehar Puri, Kehar Gir, Harjit Singh, Gursewak Singh, Rekha Rani (petitioner) and Aman for the offences under Section 302, 148, 149 of Indian Penal Code, 1860.”

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. The State's counsel opposes bail and refers to the status report.

6. It would be appropriate to refer to the following portions of the status report, which read as follows:

“11. ROLE OF PETITIONER:- That the petitioner played an active role in commission of murder of the deceased. That the petitioner in connivance with her co-accused Harjit Singh, Gursewak Singh and Aman gave fist blows on the person of Raj Kumar (since deceased), due to which, he succumbed to injuries and expired, when brought to Rajindra Hospital, Patiala. Moreover, as per the statement of complainant, he saw that his father (deceased) was lying down in his fields and Rekha (petitioner) was holding a brick in her hand. Upon raising noise by the complainant, the aforesaid persons fled away from the spot and he saw that blood was oozing out from the head of Raj Kumar (since deceased).

12. EVIDENCE AGAINST PETITIONER:- That the complainant has specifically named the petitioner in his statement recorded before the investigating agency. Moreover, the complainant has supported his version against Rekha (petitioner) during his examination-in-chief and cross examination before the Ld. Trial Court.”

7. The evidence against the petitioner is that she was holding a brick. A perusal of the reply does not mention that she had inflicted any injury with this brick or otherwise. Although there is sufficient prima facie evidence under S. 34 IPC connecting the petitioner with the alleged crime. However, in the entirety of the evidence, further pre-trial incarceration would not be justified.

8. The investigation indicates that the petitioner is not the main accused, so the petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.

9. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

10. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

11. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

12. This order is subject to the petitioner's complying with the following terms.

13. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

14. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall not enter the property, workplace, and residence of the victim's family until the statements of all non-official and informal witnesses in the trial are recorded. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to *Vikram Singh v Central Bureau of Investigation*, 2018 All SCR (CrI.) 458; and *Aparna Bhatt v. The State of Madhya Pradesh*, 2021:INSC:192, 2021 SCC Online SC 230.

15. Given the background of allegations against the petitioner, it becomes paramount to protect the victim's family and the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other

circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

16. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense. In *Mohammed Zubair v. State of NCT of Delhi*, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

17. This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

18. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

19. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

20. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

___.11.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.