

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-42540-2020 (O&M)

Date of Decision: 13.01.2022

Sukhwinder Kaur @ Rajvir Kaur ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Dr. Anmol Rattan Sidhu, Senior Advocate, with
Mr. Pratham Sethi, Advocate, for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab,
assisted by ASI Surjit Singh.

Mr. S.S.Sidhu, Advocate, for the complainant.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of anticipatory bail in respect of a case registered vide FIR No.242 dated 07.11.2020 at Police Station Maur, District Bathinda, under Sections 346 IPC (Sections 302/201/120-B IPC added later on).
2. The matter in hand pertains to death of Lakhvir Singh, who is brother of petitioner's husband. Initially, the FIR in question came to be lodged under Section 346 IPC pursuant to lodging of 'missing report' of Lakhvir Singh dated 03.11.2020. Upon recovery of dead body of Lakhvir Singh on 09.11.2020, offences under Sections 302/201/120-B IPC were added on 11.11.2020 vide DDR No.30. The dead body of Lakhvir Singh had been recovered from Kotla Branch Canal in the area of Village Jodhpur Pakhar.

3. It is the case of the prosecution that subsequently the petitioner suffered an extra judicial confession before one Naib Singh admitting therein that she alongwith her husband and son had administered poison to the deceased and thrown his dead body in Canal. It is further the case of the prosecution that Sukhbir Singh, who is brother of the deceased as well as brother of petitioner's husband, had seen the petitioner and co-accused in the company of the deceased Lakhvir Singh on the bank of the Canal on 03.11.2020.
4. Learned senior counsel appearing on behalf of the petitioner has submitted that it is a case of circumstantial evidence, wherein the entire family of the petitioner has been involved falsely mainly on account of the fact that there has been a property dispute amongst the petitioner's husband, namely, Rajpal Singh and his two brothers, namely, Lakhvir Singh and Jasvir Singh. Learned senior counsel has further submitted that the 'last seen' evidence as well as the alleged extra judicial confession are weak type of evidence and are not sufficient to connect the petitioner with the alleged death of Lakhvir Singh. It has further been submitted that the petitioner is a lady aged about 70 years and has a clean record and as such, deserves the concession of bail.
5. Opposing the petition, learned State counsel assisted by learned counsel for the complainant has submitted that even though there is no eye-witness to the alleged occurrence, but the circumstantial evidence collected by the police during the course of investigation sufficiently points towards the guilt of the petitioner and other accused inasmuch as the petitioner and co-accused had been seen in the company of the deceased immediately before his death and in fact the petitioner had also

confessed her guilt before one Naib Singh. Learned counsel for the complainant has submitted that the petitioner as well as co-accused had a motive to eliminate the deceased as they were having a dispute regarding property with him. Learned counsel for the complainant has further submitted that at the time of granting interim bail to the petitioner on 21.01.2021, report of the FSL was still awaited, but the said report has now been received, which clearly substantiates the case of the prosecution regarding poisoning of the deceased inasmuch as it has been reported in the report that the viscera was found to contain 'Organophosphorus'. Learned counsel for the complainant has further submitted that apparently the deceased after having been administered poison had been thrown in the canal so as to destroy evidence and as such, the petitioner does not deserve the concession of bail.

6. I have considered rival submissions addressed before this Court.
7. Admittedly, it is a case of circumstantial evidence. The admissibility of the extra judicial confession and the 'last seen' evidence would depend upon other evidence to be led by the prosecution, as normally said evidence is treated as weak type of evidence unless corroborated by other clinching evidence. In any case, the petitioner is a lady aged about 70 years and has already joined investigation. The co-accused had already been arrested.
8. Having regard to the aforestated position particularly the fact that the petitioner is an aged lady of about 70 years and has also joined investigation, the petition is accepted and the interim directions issued by this Court vide order dated 21.01.2021 are hereby made absolute subject to the condition that the petitioner shall join investigation as and when

called upon to do so and cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

9. While parting with this order, this Court observes that while the petitioner was granted interim bail by this Court vide order dated 21.01.2021, the challan against other co-accused was presented on 08.02.2021. The supplementary report under Section 173 Cr.P.C. against the present petitioner has not been filed till date despite the fact that the petitioner has since joined investigation pursuant to order dated 21.01.2021 and a period of almost one year has elapsed since then. On account of investigating agency/prosecution not having presented supplementary report under Section 173 Cr.P.C. against the petitioner, the proceedings before the trial Court against co-accused have virtually come to a standstill though they are in custody. The last interim order passed by the trial Court on 05.01.2022 reads as follows:

“Status report of the Officer Incharge has been received which shows that accused Sukhwinder Kaur and Rajvir Kaur have joined the investigation, but their supplementary challan is to be presented. So awaiting the supplementary challan and further report of the Officer Incharge, this case stands adjourned to 17.01.2022.”

10. Though the trial Court in the absence of presentation of supplementary report under Section 173 Cr.P.C. against the petitioner could have proceeded against the remaining accused, but at the same time, this Court cannot lose sight of the fact that in case supplementary challan is to be filed against the petitioner and the trial Court by that time already examines some witnesses, the trial Court would have to indulge into repetitive exercise again of recalling the said witnesses for their fresh

examination, which would result in adding to agony of other co-accused, who may be behind bars & whose trial would get prolonged.

11. This Court, in fact, has noticed that there is some kind of tendency with the investigating agency/prosecution not to present report under Section 173 Cr.P.C./supplementary challan during the pendency of an application for grant of anticipatory bail by an accused even though such accused may have joined investigation despite the fact that there is no bar for the same.
12. This Court can, however, visualize certain situations where the investigating agency/prosecution, keen to subject the accused to custodial interrogation, would be hoping for dismissal of application for grant of anticipatory bail so as to subject such accused to custodial interrogation and thus would prefer to wait for outcome of pending petition for grant of anticipatory bail. However, it is not in every case that an accused is required to be subjected to custodial interrogation. There would be many such cases where the prosecution is able to complete its investigation upon the accused joining investigation without there being any necessity to subject him/her to custodial interrogation.
13. Since a large number of instances have come to the notice of this Court where the investigating agency/prosecution chooses not to present report under Section 173 Cr.P.C./supplementary challan against an accused during the pendency of anticipatory bail application, it would be desirable that before taking such a decision for deferring filing of report under Section 173 Cr.P.C., the investigating agency/prosecution thoroughly examines the matter to consider as to whether the case is such where custodial interrogation would be required in case anticipatory bail

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application is dismissed despite the fact that the accused on the basis of interim directions may have joined investigation.

14. It is, thus, directed that the Director General of Police, Punjab; the Director General of Police, Haryana and the Director General of Police, UT Chandigarh, consider the feasibility of issuing appropriate directions in this regard so as to ensure that merely on account of pendency of an anticipatory bail application, the filing of report under Section 173 Cr.P.C./supplementary challan against such accused is not deferred for long period and that wherever the same is deferred, the same be done for specific and genuine reasons - say, in a case where the *modus-operandi* of crime is not completely known and the Investigating Officer is of the opinion that the case in hand is such where custodial interrogation is absolutely necessary to unravel the details of crime, though of course the same would only be possible in case the anticipatory bail is dismissed.
15. A copy of this order be conveyed to the Director General of Police, Punjab; the Director General of Police, Haryana and the Director General of Police, UT Chandigarh for necessary compliance.

13.01.2022

Vimal

(GURVINDER SINGH GILL)
JUDGEWhether speaking/reasoned:
Whether reportable:**Yes/No**
Yes/No