
(2021) 12 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 43639 Of 2020 (O& M)

Harsimran Kaur

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 17-12-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302
Code Of Criminal Procedure, 1973 — Section 438, 438(2)

Citation : (2021) 12 P&H CK 0042

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : H.S.Brar,, Anshika Sharma, Sandeep Kumar, A.P.S.Tung

Final Decision : Disposed Of

Judgement

Avneesh Jhingan, J

This petition is filed for grant of anticipatory bail in FIR No.43 dated 19.08.2018, under Sections 302, 201 read with 34 IPC, 1860, registered at Police Station City Morinda, District Rupnagar.

The petitioner was declared proclaimed offender on 17.12.2018. On 26.11.2021, following order was passed by this Court:-

[1] "Today physical hearing was held but on request of learned counsel for the petitioner, the matter is taken up by way of hybrid hearing.

[2] This is a petition under Section 438 Cr.P.C. seeking anticipatory bail in FIR No. 43, dated 19th August, 2018, under Sections 302, 201 read with Section 34 IPC, registered at Police Station City Morinda, District Rupnagar.

[3] On 23rd December, 2020, following order was passed:-

"The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

Learned counsel for the petitioner submits that the petitioner is daughter of deceased-Rajinder Singh. She is a case of Lupus Nephritis, Class-V, a chronic disease of kidney and is undergoing regular treatment at PGI, Chandigarh since 22.04.2019. In case, she has not been able to get treatment, this disease can flare up and worsen her condition, which may led to permanent damage to the kidneys requiring dialysis or renal transplant. Considering her kidney problem, she shall be more prone to disease COVID-19 pandemic.

Notice of motion.

At this stage, Mr. Amit Mehta, Sr. D.A.G., Punjab, has put in appearance and accepts notice on behalf of the respondent-State.

Adjourned to 25.01.2021.

State to file status report in the case including the status report in the case i.e. report of the SIT.

However, at this stage, considering the Certificate(Annexure P-6) dated 09.12.2020 issued by PGI,Chandigarh, till next date of hearing, petitioner shall not be arrested in the case."

[4] During pendency of the petition, status report was filed by the State alleging that petitioner is not visiting the Post Graduate Institute of Medical Education & Research, Chandigarh (PGIMER), hence it is not forthcoming as to whether petitioner is currently under treatment from PGIMER or not.

[5] Learned counsel for the petitioner has filed CRM- 39826-2021 for placing on record Annexures P-8 to P-10.

[6] Notice in the application.

[7] Mr. Amit Mehta, Sr. D.A.G., Punjab accepts notice on behalf of State. The annexures are taken on record subject to all just exceptions.

[8] Learned State counsel on instructions from ASI Sasvir Kumar submits that medical condition of petitioner is such that proper treatment would not be possible, if taken in custody. However, he further submits that she has not joined the investigation as arrest of the petitioner was stayed.

[9] Learned counsel for the petitioner submits that petitioner will join the investigation and lend full cooperation.

[10] Though not impleaded as a party, Mr. A.P.S. Tung, Advocate appears for the complainant. He vehemently opposes the prayer in the petition and submits that petition for anticipatory bail is not maintainable as the petitioner was declared proclaimed offender ('P.O.'). She is the main accused in the FIR. The complainant has filed petition for transfer of investigation to C.B.I.

[11] There is no doubt that petition for anticipatory bail is not entertained where accused is declared P.O. From the pleadings and contentions of the parties, it is

forthcoming that medical condition of the petitioner could be a major factor for P.O. Proceedings. The arrest of the petitioner is stayed since December, 2020. To ensure that investigation moves ahead, considering the statement made by learned State counsel that medical treatment of petitioner would not be possible if taken in custody, let as an interim measure petitioner join investigation within fifteen days. In the event of arrest, she shall be released on bail subject to her furnishing adequate bail bonds to the satisfaction of the Investigating Officer. She is directed to join the investigation as and when called for. She shall abide by the conditions as envisaged under Section 438(2) Cr.P.C."

Learned State counsel on instructions from-ASI Sasvir Kumar, submits that the investigating officer had visited number of times at the residence of the petitioner but her medical condition is not such to enable her to give the statement, she is on regular Dialysis.

Learned counsel for the petitioner submits that the petitioner will join the investigation as and when required and co-operate, in spite of her medical condition.

Mr. A.P.S.Tung, Advocate appearing for the complainant opposes the grant of anticipatory bail and contends that she is main accused.

Without commenting upon the merits of the case and considering the admitted fragile medical condition of the petitioner, the interim bail granted to the petitioner on 26.11.2021, is made absolute.

However, it is made clear that in case of change of circumstances or in case of non-cooperation, the State would be at liberty to revive the petition by moving an application for recalling of the order.

This petition is disposed of.

Since, main petition is disposed of, all pending applications are also disposed of.