

(1998) 06 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 9805-M of 1998

Madhu

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 02-06-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 304B

Citation : (1999) 1 DMC 611 : (1998) 4 RCR(Criminal) 2

Hon'ble Judges : B. Rai, J

Bench : Single Bench

Advocate : D.S. Walia, for the Appellant; I.P.S. Sidhu, for the Respondent

Final Decision : Allowed

Judgement

B. Rai, J.—Mrs. Madhu is sister of Rajinder Kumar, husband of Sunita Rani, deceased. Mrs. Madhu seeks anticipatory bail, in case FIR No. 30 dated April, 1998 under Sections 304-B/302/307/498A/506 read with Section 34, Indian Penal Code registered at Police Station Division No. 2 of Ludhiana, at the instance of Sunita Rani, wife of Rajinder Kumar, brother of the petitioner. It was argued that marriage of Sunita Rani was solemnised with Rajinder Kumar about 1 1/2 years prior to the date of occurrence i.e. April 1, 1998 and they were residing in Mohalla Field Gunj, whereas Mrs. Madhu, petitioner was married as back as about 15 years i.e. in the year 1983 and is living in a separate house in Chhawani Mohalla, Ludhiana with her husband and two children and Madhu has no concern whatsoever with the affairs of Rajinder Kumar and her brother Sonu. In order to fortify his contention, it was pointed out by the learned Counsel for the petitioner that even in the FIR it has been stated that Mrs. Madhu, petitioner was living separately. It has been contended that she was not present even at the time of alleged occurrence. It was further strenuously argued that a sister of the husband of the deceased who was married about 15 years prior to the occurrence was having two children and was living separately, had no occasion to

raise any demand of dowry.

2. It was also argued that case of the prosecution itself is that Rajinder Kumar poured kerosene oil on the person of Smt. Sunita Rani whereas Shamma and Sonu caught hold of her and Dimple set her on fire. In these set of circumstances, contended the learned Counsel that a case u/s 302, Indian Penal Code is made out and is not a case of dowry death. Even if such allegations are taken to be true on its face value, no part has been attributed to Madhu, and as such she cannot be made liable for the offence regarding which the present case has been registered. On the other hand learned AAG appearing on behalf of the State has argued that provisions of Section 438, Criminal Procedure Code are special provisions. These are to be used sparingly and the benefit of it can only be granted in cases having special circumstances. Possibly there can be no quarrel with the proposition put forth. In the instant case it has not been disputed that petitioner has married about 15 years back, is having two children and is residing in a different Mohalla though in the same city. These are the factors which require to be taken note of. Without commenting on the merits of the case it is thought proper that it is a fit case where the benefit of provisions of Section 438, Criminal Procedure Code should be given to the petitioner. Therefore, the petition is allowed. In the event of the arrest of the petitioner, she shall be released on bail on furnishing bail bonds/surety bonds to the satisfaction of the Arresting Officer. The petitioner shall not tamper with the prosecution evidence in any manner, whatsoever and shall not leave the territory of India without prior permission of the Trial Court. It is made clear that as and when the petitioner is required for investigation, the Investigating Officer shall keep in mind the provisions of Section 160, Criminal Procedure Code.