

(1996) 02 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 1608-M of 1996

Manjinder Kaur alias Bholi

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:

Citation : (1996) 2 RCR(Criminal) 99

Hon'ble Judges : S.C.Malte, J

Advocate : G. S. Nihalsinghwal, A. S. Bhupal, R. S. Cheema, Advocates for appearing Parties

Judgement

S. C. Malte, J.

1. The petitioner in this case is a woman aged 29 and presently serving in Health Department, Govt. of Punjab. The contents of the FIR indicate that there was some tension between the family of two sides on the issue of ill treatment by inlaws to the daughterinlaw. At this stage it is not necessary to go into the details of those issues. The incident in this case took place on 7.7.1995. On that day complainant Amrik Singh, witness Anup Singh and the deceased Mohinder Singh and Baljit Singh had been to the house of the accused, including the petitioner with a view to settle the issue regarding ill treatment to the daughter of Amrik Singh. It appears that the matrimonial dispute was to be sorted out. In the course of that temper seems to have risen high and ultimately it resulted into firing by gun. Allegedly, accused Rachhpal Singh fired at Mohinder Singh and killed him. The other deceased Baljit Singh was trying to run away. It is alleged that Bholi alias Manjinder Kaur (present petitioner) then suddenly dashed forward, snatched the gun from accused Rachhpal Singh and fired two bullets towards Baljit Singh and killed him. On behalf of the state it was submitted that this was a case of double murder. It was further submitted that Amrik Singh, the father of the deceased, an eyewitness, had lodged the FIR. It is further claimed that in the statement under Section 161 Cr.P.C., the witness Anup Singh who is the cousin of the complainant, has supported the version given in the FIR. In

other words, it was submitted there is enough credible material to infer that the present petitioner was concerned with the commission of offence of murder. On this premise it was submitted on behalf of the State that the petitioner was not entitled to the anticipatory bail.

2. On behalf of the petitioner it was submitted that in this case, after investigation, the Deputy Superintendent of Police (Detective) found that the present petitioner was innocent. It was followed by further scrutiny by the Superintendent of Police (Detective), and he also arrived at the same conclusion that this petitioner was innocent. Under these circumstances, while submitting report under Section 173 Cr.P.C. the name of the petitioner was shown in column No. 2, meaning thereby that the chargesheet was not submitted against the petitioner. The learned Additional Sessions Judge, however, took into consideration the case thus spelt out in the FIR, supported by the statement of Anup Singh under Section 161 Cr.P.C. and decided to proceed against the petitioner and issued summons against her. In the light of these sequence of events it was submitted that until the guilt was proved, this petitioner was entitled to anticipatory bail. It was submitted that during the long span till this date, while the petitioner was enjoying the liberty, there is nothing to show that she misused the liberty or that she has interfered with the investigation in any manner.

In so far as it pertains to anticipatory bail at this stage, it may be mentioned that provisions of Section 438 Cr.P.C. in respect of anticipatory bail are guided by the same principles as are laid down under Section 437 Cr.P.C. which makes provisions regarding the grant of bail in nonbailable offences. That section in clear words indicates that a person charged of grave offence should not be released on bail. That is, however, qualified with the proviso that gives discretion to the court to release the accused on bail if such a person is woman or sick etc. In this case since the petitioner is a young woman aged 29 years, presently serving in the Health Department it is one of the factors that weighs in her favour.

3. The second factor that deserves consideration at this bail stage is that after investigation by two responsible officers of the police, they arrived at a conclusion that the petitioner was innocent. It was stated on behalf of the State that the Deputy Superintendent of Police simply intimated that he found the petitioner innocent without clarifying the reason why. However, the matter did not rest there only but the Superintendent of Police (Detective) had also undertaken the further exercise and he also arrived at the same conclusion. Section 437 Cr.P.C. contemplates that bail should not be granted if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life. In other words, while granting the bail, besides the gravity of the offence the other circumstances should also be taken into consideration to form tentative opinion at the bail stage as to whether there appears reasonable ground for believing that the accused was guilty of offence. Undoubtedly, in such case a prima facie case as was spelt out from the

investigation can be considered. In this case on one side is the FIR and the statement of one Anup Singh and on other hand we have also the report of two senior police officers who on scrutiny formed the opinion of innocence of the petitioner. In view of these conflicting state of affairs at the stage of investigation itself, there is a room for strong argument that there are no reasonable ground at this stage to arrive at the conclusion that the petitioner was guilty of the offence. Thus on considering this material from various angles, I am inclined to grant bail to the petitioner. Pursuant to the anticipatory bail granted to her, she has already appeared before the Additional Sessions Judge and executed the necessary bail bond and surety bond. The interim anticipatory bail granted to her is confirmed as anticipatory bail on same terms and conditions, on executing fresh bail bonds.