

**In the Court of Mr. Bishan Saroop (PB-0449)
Addl. Sessions Judge, Tarn Taran**

CNR no. PBTT01003801/2019

BA No.470/23.07.2019

Regd. No. BA/1954/2019

Decided on : 09.08.2019

Rajbir Kaur wife of Gurdev Singh resident of village Doohal Kohna,
Tehsil Patti District Tarn Taran.

-----Applicant.

Versus

State of Punjab

FIR No. 29 dated 09.05.2019

U/s 328, 306 IPC.

P.S. Khalra, Tarn Taran.

Bail Application U/s 438 of Cr.P.C.

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Present - Mr. Gurmit Singh, Adv counsel for the applicant-accused.
Mr.Amarpal Singh, Addl. Public Prosecutor for the State

BAIL ORDER

Vide this order, I shall dispose off the above mentioned bail application preferred under Section 438 of the Code of Criminal Procedure by the applicant enumerated above, FIR No. 29 dated 09.05.2019, U/s 328, 306 IPC P.S Khalra, Tarn Taran

2) Notice of this bail application was given to the State and Mr. Amarpal Singh, Addl. Public Prosecutor made appearance on behalf of the State and produced the record.

3) The aforesaid FIR was registered, at the instance of Complainant Amandeep Kaur aged about 24 years wife of Late Gurjant

Singh resident of village Bhaini Massa Singh, Tarn Taran who made a statement to the effect that she is resident of above said address and household lady. She is having two children, one son Abhaydeep Singh 5 year old and one younger daughter 1 month old. Her husband Gurjant Singh working as motorcycle repair at Adda Algo kothi bus stand Khemkaran road and sometime he received call from a one girl and she has suspicion regarding this. On 24.04.2019 her husband working at his shop and at about 03.30 pm, Mandeep Singh who is working as helper with her husband on his shop, called herself and told that Gurjant Singh having illicit relation with Rajbir kaur wife of Bittu resident of Doohal Kona and today Rajbir Kaur came at the shop and she told her husband that she took poison with her and both of them after taking the said poison end their life and she told that Gurjant Singh firstly he consumed the said poison and after she consumed the same. When Gurjant Singh consumed the half bottle of poison then Rajbir Kaur take the half bottle of poison and went from the spot. After that Mandeep Singh helper, Lovepreet Singh and her mother in law Baljit Kaur after arranging the vehicle, took Gurjant Singh and admitted him at Guru Ram Dass Hospital and during treatment he was died on 09.05.2019 at morning. During treatment Rajbir Kaur also gave threats at the shop of complainant that if her name was disclosed by someone then she consumed the poison and commit suicide and confined the whole family of Gurjant Singh. On the basis of said statement of complainant a case has been registered against the accused-applicant.

4) I have heard the learned counsel for the applicant-accused as well as learned Addl. Public Prosecutor for the State and perused the record.

5) Mr. Gurmit Singh, Advocate, appearing on behalf of the applicants-accused have vehemently argued that the applicant is innocent and is being tried to be falsely implicated in the above noted case, which is registered at the instance of Amandeep Kaur, complainant. The accused-applicant has never committed any abetment regarding the commission of offence as alleged. Moreover, no offence under section 328, 306 IPC is made out against the accused-applicant. He further argued that the applicant-accused is ready to join the investigation with the Investigating Agency. With all these pleas, he prayed for concession of pre arrest bail.

6) Conversely, zeroing in on the arguments of learned counsel for applicants-accused, the learned Additional Public Prosecutor for the State has vehemently opposed the application for the grant of bail. According to him, the present case is not a fit case for grant of concession of bail. He further submits that the applicant committing abetment of the Husband of complainant and during investigation, offence U/s 328, 306, is found to have been made out against the applicant. He further contended her custodial interrogation is required in the present case. He prayed that keeping in view of the seriousness of the offence, the applicant may not be released on bail.

7) After giving my thoughtful consideration to the rival submissions put forth by both the side and on careful perusal of averments put in the application, coupled with due assistance rendered, record so

produced, the court finds merits in the submissions of Id. Addl. Public Prosecutor Sh. Amarpal Singh for the State. The plea of false implication as now raised on behalf of the applicant/accused can only be ascertained at a later stage, when the evidence is adduced during the course of trial. I do feel that the allegations as levelled against the applicant/accused, prima facia, do not seem to be false or groundless as there are specific allegation that on 24.04.2019 accused-applicant Rajbir Kaur abetted Gurjant Singh to commit suicide. It is well settled that the provisions of section 438 Cr. PC are attracted only when it is found to be tottaly false, baseless and groundless. It is the applicant-accused to set out that no Prima facia case is made out against her. From the facts on record, it is not reflected that the accusations against the applicant-accused totally false and baseless.

8) When, totality of the facts of the present case when taken into consideration coupled with the ratio-decidendi laid down by the constitutional bench of the Hon'ble Apex Court in **“Gurbax Singh Sibia Versus State of Punjab, 1980(2) Supreme Court cases 565”** wherein it has been made abundantly clear that while deciding the application U/s 438 of Cr.P.C. that the court has to strike the balance between the liberty of the citizens and interest of general public at large. The provisions of Section 438 of Cr.P.C are intended to protect the people from a process which may suggest abuse of law, but certainly not intended to benefit people who have much to explain for their conduct which prima facie is in conflict with law. Hence, the court is of the considered opinion that in order to facilitate a through and fair investigation, the custodial interrogation of the applicant is rather inevitable. The investigation is on the offing and there are ascertained facts relating to the occurrence which

are within the exclusive knowledge of the applicants and for the said purpose his custodial interrogation is required. Consequently, I find no feature available in this case, which can justify or warrant the invocation of extraordinary equitable discretion under Section 438 Cr.P.C. Hence, the instant application for grant of anticipatory bail, being bereft of any substances, is hereby dismissed. Police record be return and Papers be consigned to the record room.

**Pronounced in the open Court:
09.08.2019**

Aman Dhiman Stenographer Gr.III

**(Bishan Saroop)
(UID No. PB-0449)
Addl. Sessions Judge,
Tarn Taran.**

Present - Mr. Gurmit Singh, Adv counsel for the applicant-accused.
Mr.Amarpal Singh, Addl. Public Prosecutor for the State

Heard on the application for amendment regarding the offence in the bail as earlier applicant filed his anticipatory bail under section 438 Cr.PC with offence 429, 306 IPC as per above FIR but when the investigation office came to the court along with record then counsel for the applicant came to know offence under section 328 IPC has been added in the FIR. As such, the present amended application be allowed and offence under section 328 IPC be added in the bail application instead of 429 IPC.

The request heard and considered. At the largest interest of justice, the present application is hereby allowed and Reader of this court is directed to add the offence under section 328 IPC instead of section 429 IPC with red ink and made note in this regard on the head of bail application.

Arguments heard and vide my separate detailed order even date, the instant bail application is disposed off, as detailed therein. Police record be returned and papers be consigned.

Pronounced in the open Court:
09.08.2019

Aman Dhiman Stenographer Gr.III

(Bishan Saroop)
(UID No. PB-0449)
Addl. Sessions Judge,
Tarn Taran.