

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

216

CRM-M-826-2023

Date of Decision : 13.01.2023

Amanpreet Kaur

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr.Shakti Mehta, Advocate
for the petitioner.

Mr. Digvijay Nagpal, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No. 151 dated 10.07.2019 under Sections 306, 34 of IPC, registered at Police Station Patran, District Patiala.

2. Learned counsel for the petitioner *inter alia* contends that the co-accused Balwinder Singh has been granted concession of anticipatory bail vide order dated 25.08.2021 passed by this Court in CRM-M-38370-2019 (Annexure P-6) and co-accused Daljit Singh (husband of the petitioner) has been granted concession of regular bail vide order dated 03.12.2019 passed by this Court in CRM-M-50317-2019 (Annexure P-7). The FIR was registered on 10.07.2019 and the petitioner had undisputedly lodged complaint against deceased on 06.07.2019 and she had committed suicide in the intervening night of 09/10.07.2019. The petitioner had lodged DDR dated 06.07.2019 (Annexure P-5) against deceased. She was posting tampered/morphed photographs of the petitioner and her family

members. The petitioner is in custody since 03.12.2022. The petitioner is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Patiala and staying with family members. The petitioner has deep roots in the society. There is no possibility of flee from justice.

3. Custody certificate dated 12.01.2023 is taken on record. Registry is directed to tag the same at appropriate place.

4. Learned State Counsel submits that supplementary *challan* is yet to be presented though *challan* against co-accused has already been presented. Charges against co-accused stand framed. He further submits that there are 18 prosecution witnesses and no one have been examined. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

5. Proviso to clause (i) & (ii) of sub-section (1) of Section 437 Cr.P.C. provides that the court may release on bail if a person accused of commission of offence punishable with death or imprisonment for life is 'under the age of sixteen years or is a woman or is sick or infirm'.

While adverting with bail to a woman, a two judge bench of Hon'ble Supreme Court in **Satender Kumar Antil v. CBI, (2022) 10 SCC 51** has observed:

69. Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the accused person is sick or infirm. In a case pertaining to women, the court is expected to show some sensitivity. We have already taken note of the fact that many women who

commit cognizable offences are poor and illiterate. In many cases, upon being young they have children to take care of, and there are many instances when the children are to live in prisons. The statistics would show that more than 1000 children are living in prisons along with their mothers. This is an aspect that the courts are expected to take note of as it would not only involve the interest of the accused, but also the children who are not expected to get exposed to the prisons. There is a grave danger of their being inherited not only with poverty but with crime as well.

6. A two Judge Bench of Hon'ble Supreme Court in **Satender Kumar's case (supra)**, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

7. Intent of arrest and reason of denial of bail is to:

- i) Secure the appearance of the accused at the time of trial;
- ii) Allay possibility of repeating of offence &

jeopardising own life on account of grim prospect of being convicted;

iii) Avoid possibility of tampering of evidence and security of witnesses who may be pressurised or maltreated.

8. A person who seeks to be liberated must take judgment and serve sentence in the event of his conviction. The nature of the crime charged, severity of punishment prescribed, prime facie available evidences, history & background of the accused may indicate that any amount of bond and surety is not going to secure presence of accused, at the time of conviction. Detention or arrest not only deprives a person from his fundamental right of personal liberty guaranteed by article 21 but also freedom guaranteed by article 19(1) of our Constitution.

9. Keeping in mind:

- i) The Petitioner is in custody since 03.12.2022;
- ii) Petitioner had lodged DDR against deceased on 06.07.2019 who committed suicide on the intervening night of 09/10/07.2019;
- iii) There are 18 prosecution witnesses and till date no one has been examined, thus, there is abysmally low possibility of conclusion of trial in near future;
- iv) The co-accused Balwinder Singh has already been granted concession of anticipatory bail by this Court and Daljit Singh has been granted concession of regular bail by this Court;
- v) The petitioner is a married woman having two minor

children;

vi) Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act, Companies Act are not applicable in the case in hand;

vii) The Petitioner is not involved in any other criminal case;

viii) The Petitioner is permanent resident of District Patiala and staying with family members;

ix) Prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of Petitioner being flee from justice or tempering the evidences or winning over/threatening the witnesses;

this Court is of the considered opinion that present petition deserves to allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by trial Court/illaqa/Duty Magistrate concerned.

(JAGMOHAN BANSAL)
JUDGE

13.01.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>