

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

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CRM-M-7694-2022(O&M)

Date of Decision: 22.05.2023

Gurmeet Kaur @ Shamsi**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Ruhani Chadha, Advocate for
 Mr. Vaibhav Narang, Advocate for the petitioner
 Ms. Guramrit Kaur, DAG, Punjab
 (assisted by ASI Manjit Singh)

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner, through instant petition under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking concession of regular bail in FIR No.07 dated 03.01.2021 under Sections 376, 120-B, 342 & 506 of Indian Penal Code, 1860 (for short 'IPC') and Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') (Sections 376 DA, 344 of IPC and Section 17 of POCSO added later on) registered at Police Station Chheharta, District Police Commissionerate, Amritsar.

2. The case of the prosecution is that complainant lodged a complaint alleging that prosecutrix is her daughter. Gurmeet Kaur is staying in a rented accommodation in a house which is just in front of their house. They had developed friendly relations with each other. In September' 2020, when she was not at home, Gurmeet Kaur took away

her daughter to Amritsar. On 09.12.2020, victim called her and asked her to take her away. The victim disclosed her that Gurmeet Kaur is involved in prostitution and during her stay at Amritsar, she was thrown to prostitution. Victim has been raped by different persons including husband of Gurmeet Kaur.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix had lodged complaint against her mother alleging that she wants to involve her in prostitution. Till date prosecutrix has not withdrawn her said complaint. Under the pressure of her mother, the prosecutrix has made statement against the petitioner. The petitioner is in custody since 06.01.2021 and she is not involved in any other offence. The prosecutrix has already been examined, thus there is no possibility of winning over or pressurizing her. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Amritsar. The petitioner was granted interim bail for 7 days and she has surrendered within time. The husband of the petitioner is also in custody. The petitioner is having one unmarried daughter and there is no one to look after her.

4. Custody certificate dated 19.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 06.01.2021 and she is not involved in any other offence.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. The petitioner is involved in the

commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

6. 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’.

7. While advertent 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.”

8. The petitioner is in custody since 06.01.2021 and she is not involved in any other crime. The husband of the petitioner is also in custody. The trial is at the stage of prosecution evidence. The Trial Court yet has to return definite findings on the disputed issues. The material witness i.e. prosecutrix stands examined, thus, there is no possibility of winning over or pressurizing her. The petitioner was granted interim bail for 7 days and she has surrendered within time. She is having one unmarried daughter. As prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody. The prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of petitioner being flee from justice or tampering the evidences or winning over/threatening the witnesses.

9. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaq/Duty Magistrate concerned.

10. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

22.05.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>