

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

221

CRM-M-17197-2023

Date of Decision: 19.04.2023

Bubly

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Sarabjeet Singh, Advocate with  
Mr. Sylvester, Advocate for the petitioner

Mr. Shiva Khurmi, AAG, Punjab  
(assisted by ASI Kulwant Singh)

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**JAGMOHAN BANSAL, J. (ORAL)**

1. The petitioner through instant petition under Section 439 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking regular bail in FIR No.109 dated 09.03.2023 under Sections 363 & 366 of Indian Penal Code, 1860 (for short 'IPC') (Sections 366-A & 120-B of IPC added later on) registered at Police Station Islamabad, District Amritsar.

2. The case of the prosecution is that mother of victim lodged a complaint alleging that she has five children. Her daughter, aged 17 and ½ years on 06.03.2023, went to the market to purchase noodles but did not return. She tried to contact her on mobile phone but it was 'switched off'. She has doubt that unknown person has enticed her daughter on the pretext of marriage.

The petitioner is mother of Kanchan Kumar with whom daughter of the complainant had eloped.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix eloped with son of the petitioner on 06.03.2023 and they made a representation to jurisdictional Senior Superintendent of Police on 10.03.2023. They filed CRWP No.2791 of 2023 before this Court seeking protection of their life and liberty. This Court, while disposing of aforesaid petition, noticed that petitioner therein (prosecutrix herein) is minor. The petitioner was not even aware of eloping of prosecutrix with son of the petitioner. She is as aggrieved as complainant, nevertheless, petitioner without any basis, has been arrested and she is in custody since 21.03.2023. She 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 Sri Muktsar Sahib. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Learned State Counsel submits that matter is under investigation and petitioner was arrested on the ground of suspicion of her involvement in the crime. Learned State counsel fairly confirms that prosecutrix and son of the petitioner had approached this Court seeking protection of their lives and liberty. He further confirms that petitioner is not involved in any other crime and no recovery is to be effected from her.

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'.

6. While advertng 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.”*

7. In the case in hand, the son of the petitioner and daughter of the complainant had eloped on 06.03.2023 and they made representation to Senior Superintendent of Police on 10.03.2023 and thereafter, they filed Criminal Writ petition seeking protection of life and liberty on 20.03.2023. This Court vide order dated 22.03.2023 has directed Senior Superintendent of Police to look into representation of the petitioners therein. There is nothing on record disclosing that petitioner had

played active role in eloping of prosecutrix with her son. No recovery is to be effected from the petitioner. She is in custody since 21.03.2023 and she is not involved in any other offence. 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.

8. 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/Illaqa/Duty Magistrate concerned.

9. 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

19.04.2023  
Mohit Kumar

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