

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

210

CRM-M-27120-2023

Date of Decision: 01.06.2023

Rani Devi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sachin Ohri, Advocate for the petitioner

Ms. Guramrit Kaur, DAG, Punjab
(assisted by ASI Naresh Kumar)

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 concession of regular bail in FIR No.53 dated 15.04.2023 under Sections 363, 366 of Indian Penal Code, 1860 (for short 'IPC') [Section 120-B and Section 376 of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') added later on] registered at Police Station Division No.2 Pathankot, District Pathankot.

2. The case of the prosecution is that complainant lodged a complaint alleging that his daughter is studying in 10th Class and her date of birth is 05.06.2008. His daughter went to school on 15.04.2023 but did not return home. From the school staff, he came to know that his daughter on 15.04.2023 did not come to school. His daughter has been abducted by unknown persons on the pretext of marriage. A supplementary statement of the complainant was recorded wherein he disclosed that petitioner and

her son have kidnapped his minor daughter. On the basis of supplementary statement, Section 120-B of IPC was added and petitioner was arrested.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is mother of Arjun Singh against whom there are allegations of kidnapping and rape. The petitioner being mother of main accused has been implicated just to create pressure upon main accused and increase the gravity of offence. The petitioner has been embroiled invoking provisions of Section 120-B of IPC. She is in custody since 22.04.2023 and she is not involved in any other offence. No recovery is to be effected from the petitioner. There is no allegation of conspiracy on the part of petitioner, however, she has been mechanically implicated. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Pathankot. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 31.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 22.04.2023 and he is not involved in any other offence.

5. Learned State Counsel submits that investigation has already completed and shortly challan would be presented. 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 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.”

8. The petitioner is in custody since 22.04.2023 and she is not involved in any other offence. No recovery is to be effected from the petitioner. Her son i.e. main accused is already in custody. The petitioner has been implicated invoking provisions of Section 120-B of IPC. The conclusion of trial would certainly take quite long time and petitioner

cannot be kept in custody for indefinite period. 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/Illaqa/Duty Magistrate concerned.

10. If the petitioner or her family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted by this order.

11. 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

01.06.2023
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No