

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

218

CRM-M-42276-2022

Date of Decision: 20.01.2023

Nilam @ Chamela

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Chahit Bansal, Advocate for
Mr. Pradhuman Garg, Advocate for the petitioner
Mr. Digvijay Nagpal, AAG, Punjab
Mr. S.K. Kanojia, Advocate for
Mr. Vishesh Dogra, Advocate for the complainant

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No. 122 dated 24.07.2022 (Annexure P-1) under Sections 363, 366-A, 376, 120-B of IPC and Sections 4, 6, 17 of POCSO Act, registered at Police Station Division No.6, Jalandhar.

2. Learned counsel for the petitioner, *inter alia* contends that petitioner is in custody since 10.08.2022 and there is no specific allegation against the petitioner in the statement of the complainant tendered under Section 164 Cr.P.C. The complainant and her mother stand examined and they have turned hostile. The petitioner is not involved in any other offence. The petitioner has been wrongly

implicated in the commission of alleged offence. The petitioner has deep roots in the society. There is no possibility of flee from justice.

3. Learned counsel for the complainant, *inter alia* submits that matter stands amicable settled between the parties and he has no objection if petitioner is released on regular bail.

4. Custody certificate dated 19.01.2023 is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. He further submits that out of 13 witnesses, 3 have already been examined which include complainant and two other material witnesses. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

6. A two judge Bench of Hon'ble Supreme Court in ***Satender Kumar Antil v. CBI; (2022) 10 SCC 51***, 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; and
- 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. 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'.

10. 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.”

11. Keeping in mind:

- i) The Petitioner is in custody since 10.08.2022;
- ii) Police report under section 173 of Cr.P.C. stands filed, charges stand framed;

- iii) There are 13 prosecution witnesses and till date only 3 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future;
- iv) The material witnesses stand examined and they stand turned hostile;
- v) 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;
- 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) 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.

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

20.01.2023
Mohit Kumar

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