

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

207

CRM-M-45571-2022

Date of Decision: 09.02.2023

Poonam Jamwal

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Parvesh Malik, Advocate for the petitioner

Mr. Amish Sharma, AAG, Punjab
(assisted by ASI Parminder Singh)

Mr. Upender Prasher, Advocate for the complainant

JAGMOHAN BANSAL, J. (ORAL)

On 14.10.2022, the following order was passed:-

“Mr. Ramnish Puri, Advocate has put in appearance on behalf of the petitioner and filed Vakalatnama, which is taken on record.

Petitioner is seeking anticipatory bail in the case bearing FIR No.104 dated 31.08.2022, under Sections 363/366 IPC, 1860, registered at Police Station Division D, District Amritsar.

Learned counsel for the petitioner submits that the victim is aged about 16 years and FIR has been registered at the instance of her mother when she went missing from the house on 27.07.2022. It has been further stated that the victim has solemnized roka ceremony with the son of the petitioner in the presence of her parents. Furthermore, the victim has been recovered and the son of the petitioner has been arrested. The victim has admitted the fact of roka

ceremony in her statement recorded under Section 164 Cr.P.C and has not attributed any allegation of sexual assault.

Learned State counsel had sought time to file reply in the matter on the previous date of hearing. However, on instructions from ASI Balwinder Singh, learned State counsel submits that the reply has not yet been prepared but has affirmed the fact that the victim has been recovered and in her statement recorded under Section 164 Cr.P.C, she has acknowledged the fact of having performed roka ceremony with the son of the petitioner. Furthermore, the victim has attributed allegations of maltreatment against her step father and has also stated that the son of the petitioner and his family are not at fault. The victim is presently confined in Bhavan Ashram, B-Block, Bhai Gurdas Ji Nagar, New Amritsar.

Adjourned to 13.12.2022.

Meanwhile, it is directed that the petitioner shall join the investigation and would come present as and when called for and in the event of arrest, the petitioner shall be admitted to interim bail on her furnishing personal and surety bonds to the satisfaction of Arresting/Investigating Officer. The petitioner shall also abide by the conditions as specified under Section 438(2) Cr.P.C.”

Learned State counsel, on instructions from ASI Parminder Singh, submits that petitioner has already joined investigation and no custodial interrogation is required.

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 advertizing 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.*

In view of the above, the petition is allowed and the interim bail granted to the petitioner vide order dated 14.10.2022 is made absolute subject to the conditions envisaged under Section 438(2) of Cr.P.C.

If the petitioner or his 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.

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

09.02.2023
Mohit Kumar

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