

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

206

CRM-M-50711 of 2022
Date of Decision: 05.01.2023

Ramandeep Kaur

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Joginder Pal Devgan, Advocate
for the petitioner.
Mr. Digvijay Nagpal, AAG, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No. 52 dated 19.5.2022 under Sections 363, 366 and 120-B of the Indian Penal Code, 1860 (Sections 376 and 201 IPC and Section 6 of Prevention of Children from Sexual Offences Act, 2012 added later), registered at Police Station Dera Baba Nanak Police District Batala, District Gurdaspur.

2. Learned counsel for the petitioner inter alia submits that petitioner is in custody since 30.8.2022. The petitioner is a 28 years old married lady and staying at Jhajjatan, Police Station Raja Sansi, Amritsar Rural whereas parents of the petitioner are staying at Gali No. 12 Mohalla Maqboolpura, Amritsar. The main allegation against the petitioner is that she had extended accommodation to co-accused who is brother of the petitioner. The petitioner is not involved in any other case. The petitioner is

staying with her husband and other family members. The challan has already been presented and charges against main accused stand framed. The petitioner has deep roots in the society. There is no possibility of flee from justice.

3. Learned State Counsel, on instructions from ASI William Masih, submits that challan stands presented and charges against main accused stand framed vide order dated 1.10.2022. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

4. 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.”

5. 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;
- iii) Avoid possibility of tampering of evidence and security of witnesses who may be pressurised or maltreated.

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 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.

6. 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.

7. Keeping in mind:

i) The Petitioner is in custody since 30.8.2022 and being lady deserves leniency in terms of proviso to Section 437(1) of Cr.P.C.

ii) Police report under Section 173 of Cr.P.C. stands filed and charges stand framed against the main accused;

iii) Alleged role of petitioner does not demand further custody;

iv) There are total 13 witnesses and conclusion of trial would take considerable time;

v) Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act, Companies Act are not applicable in the case in hand;

vi) The Petitioner is not involved in any other criminal case;

vii) The Petitioner is permanent resident of Amritsar and having family members;

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.

(JAGMOHAN BANSAL)
JUDGE

5.1.2023
paramjit

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No