

219 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CRM-M-2858-2024
Date of decision: 24.01.2024

BABLI

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parminder Singh Sekhon, Advocate
 for the petitioner.
 Ms. Geeta Sharma, Dy. AG, Haryana and
 Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

This is the first petition filed under Section 439 of Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.503 dated 26.07.2023 registered under Sections 379-A and 34 of Indian Penal Code at Police Station Sirsa City, District Sirsa.

2. The present FIR was lodged on the allegations that on 26.07.2023, at about 01:00 PM, the complainant Gurnam Kaur had visited Gurudwara Chilla Sahib, for offering prayers. After having langer, when she went to wash her hands, huge rush was there and in the said rush, one lady had snatched her gold earrings weighing 8 grams from her ears. She immediately raised noise. 2-3 other females were with that lady and they fled away from the spot. The above mentioned females had also snatched gold chain from Manpreet Kaur, one earring from Maya Devi and earring of Manthra Bai. They apprehended the accused Babli (petitioner herein) at the spot whereas the other females succeeded to flee from the spot. On inquiry, petitioner Babli disclosed their

names as Maya wife of Pammi and Rita wife of Kala, residents of District Patiala. They prayed for taking legal action and for effecting recovery of their ornaments.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is a household lady, mother of three minor children and she has been falsely implicated in the present case. The petitioner is having clean antecedents and was not involved in any other case, prior to the registration of the FIR (supra). The investigating agency has already concluded the investigation and the petitioner has suffered the custody of more than 06 months and her incarceration has severely effected the welfare of her minor children.

4. Per contra, the learned State counsel, on instructions from investigating officer, opposes the prayer of grant of regular bail to the petitioner on the ground that her complicity in the alleged crime has been duly established as she was apprehended at the spot by the general public and one gold earring was recovered from her possession.

5. Many women who commit cognizable offenses are poor and illiterate. In many cases, they have children to take care of, and there are many instances when the children have no other option but are to live in prisons with their mothers. A two Judge bench of the Hon'ble Supreme Court in ***Satender Kumar Antil vs Central Bureau Of Investigation, (2022) 10 SCC 51*** has taken cognizance of their plight and held that in cases pertaining to women, the Court is expected to show some sensitivity. Speaking through Justice M.M. Sundresh, the following observations were made:

“51. 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 offenses 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.

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58. *Section 437 of the Code empowers the Magistrate to deal with all the offenses while considering an application for bail with the exception of an offense punishable either with life imprisonment or death triable exclusively by the Court of Sessions. The first proviso facilitates a court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm, as discussed earlier. This being a welfare legislation, though introduced by way of a proviso, has to be applied while considering release on bail either by the Court of Sessions or the High Court, as the case may be. The power under Section 439 of the Code is exercised against an order rejecting an application for bail and against an offence exclusively decided by the Court of Sessions. There cannot be a divided application of proviso to Section 437, while exercising the power under Section 439. While dealing with a welfare legislation, a purposive interpretation giving the benefit to the needy person being the intendment is the role required to be played by the court. We do not wish to state that this proviso has to be considered favourably in all cases as the application depends upon the facts and circumstances contained therein. What is required is the consideration per se by the court of this proviso among other factors. (emphasis supplied).*”

6. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is a first time offender and is mother of three children. The investigation agency has already concluded the investigation and submitted the final report under Section 173 Cr.P.C. on 28.09.2023. Trial of the case has not made any progress yet as out of 13 witnesses cited by the prosecution, only 02 have been examined so far. Culpability, if any, would be determined at the time of the trial. No useful purpose would be served by further detention of the accused-petitioner. Keeping the petitioner in further detention, without the prospect of the trial being concluded in the near future, would be violative of her rights under Article 21 of the Constitution of India.

7. Keeping in view the facts and circumstances of the case, the present petition is allowed without commenting upon the merits of the case lest it may prejudice the outcome of the trial and the petitioner-Babli is ordered to be released on regular bail during trial on her furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

January 24, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No