

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

Date of decision: 17.07.2024

....Petitioner

Versus

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kunal Dawar, Advocate
for the petitioner.

None for the respondent No.2.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.338 dated 17.04.2023 (Annexure P-1) under Sections 6/16/17 of POCSO Act, Section 81 of Juvenile Justice Act, Sections 9/10/11 of Prohibition of Child Marriage Act and Sections 420/468/471/120-B of IPC registered at Police Station Sector 58 Faridabad, Haryana.

The FIR (*supra*) was lodged on the complaint that the accused/petitioner by enticing the minor girls and their parents/guardians is arranging the marriage of minor girls with persons who are either widower or whose marriage is not being solemnized in lieu of large amount of money. The accused/petitioner is also arranging physical relations prior to marriage of the minor girls with the prospective bridegroom in her house. On 27.02.2022, the accused/petitioner has arranged the marriage of the prosecutrix and her younger sister with Anil and Rinku. Prior to that, the accused/petitioner has arranged the relations of the prosecutrix with unknown person but later on told that the

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boy had died due to illness. Due to marriage, a girl child was born to the prosecutrix and a false Aadhaar card has been made showing her date of birth to be 24.09.2003 instead of 24.09.2007. On the basis of the said complaint, flying squad of the CM along with Duty Magistrate and Members of the Child Welfare Committee reached the place of occurrence. From the house of the accused/petitioner, the minor girl as bride and a boy were found sitting and as per the Hindu rites and ceremonies their *saptpadi* before the sacred fire was being conducted. The bridegroom informed that the accused/petitioner has taken Rs.11,300/- as expenses apart from Rs.1 lakh from him for the marriage and, thus, the instant FIR was registered.

Learned counsel for the petitioner *inter alia* contends that the allegation against the petitioner levelled in the case set up by the prosecution are too far fetched and improbable. Petitioner is not the main accused for the offences invoking the provisions of POCSO Act. The allegation against the petitioner is that she is arranging marriages of the minor girls with the prospective bridegroom and prior to the marriage, she facilitates their physical relations, are unbelievable solely on the ground that the sister of the complainant is living happily after her marriage which was arranged by the petitioner and she has admitted so in her statement recorded under Section 161 Cr.P.C. before the jurisdictional police authorities. The marriage of the complainant had taken place on 27.02.2022 and a daughter was born in November, 2022 and, thereafter, the present FIR was registered and such delay would certainly create suspicion on the prosecution version. It is further contended that even if the FIR against the petitioner stated to be true as a gospel truth, she is only liable for the offences under Section 11 of Prohibition of Child



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Marriage Act, 2006 and Section 81 of the Juvenile Justice Act, in which, the maximum punishment is provided 02 years and 05 years, respectively and the petitioner is behind the bars for the last more than 14 months and she is a widow & household lady having a minor son. He further submits that the petitioner is not involved in any other case.

The learned State counsel has filed the custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that there are serious and specific allegations against the petitioner and she has been taking hefty amount on the pretext of arranging marriage of minor girls with prospective bridegrooms who are much elder in age and previously married, however, she could not controvert the fact that petitioner is not involved in any other case.

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.”

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars for the last 01 year 02 months and 27 days as per custody certificate. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as out of 24 prosecution witnesses, none has been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall 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.

In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Asha 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.

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.

(HARPREET SINGH BRAR)
JUDGE

17.07.2024

Neha	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No