

CRM-M-10018-2024

103+212 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-10018-2024 (O&M)
Date of Decision: 20.03.2024

SAKSHI SHARMA

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gursimran Singh Madaan, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

Mr. Paramjeet Phor, Advocate for the complainant.

HARPREET SINGH BRAR J. (Oral)

CRM-12776-2024

This is an application under Section 482 of Cr.P.C. seeking permission for placing on record the documents/material as Annexure A-1 to A-II.

For the reasons mentioned in the application, same is allowed and Annexure A-I to A-II are taken on record subject to all just exceptions.

Registry is directed to tag the same at the appropriate place.

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1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 238 dated 30.05.2023 registered under Sections 420, 406 of Indian Penal Code at Police Station Sector 13-17, Panipat, Haryana.

2. The aforesaid FIR was registered on the statement of complainant Ankush on the allegations that there was a Petrol Pump in the name and style Panipat Filling Junction near Babarpur Mandi, District Panipat of

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Indian Oil Corporation owned by accused/petitioner Smt. Sakshi Sharma wife of co-accused Neeraj Kumar Garg (33.34%), Vinit Kumar Tomar (33.33%) and Vipin Kumar Tyagi (33.33%) and petitioner Sakshi Sharma and another partner Vinit Kumar Tomar induced complainant to buy their shares in the petrol pump to the extent of 25% each. Both the petitioner and Vinit Kumar Tomar executed an agreement dated 23.08.2022 for sale of their 25% share for Rs.56,87,500/-each i.e. total 50% share for a total price of Rs.1,13,75,000/-. Complainant further alleged that he paid entire price of Rs.56,87,500/- to petitioner Sakshi Sharma of her 25% share and he (complainant) paid Rs.47,87,500/- to another partner Vineet Kumar Tomar. Complainant asserted that in this way he paid total Rs.1,04,75,000/- to said both partners of the Petrol Pump. Complainant also submitted that he remained always ready to pay balance Rs.9,00,000/- to partner Vineet Kumar Tomar. Complainant further alleged that he had, after execution of agreement dated 23.08.2022, started running the petrol pump by employing his maximum efforts. As per terms and conditions of said agreement both the sellers had to obtain a letter of reconstitution approval. Seller Vineet Kumar Tomar always remained ready to complete formalities on his part. But petitioner/partner Smt. Sakshi Sharma became dishonest. She started avoiding the matter whereas signatures of both the sellers were required. It was also alleged that co-accused Neeraj Kumar Garg (husband of the petitioner) was also involved in cheating the complainant and in fact both husband and wife conspired to commit fraud with the complainant. Not enough complainant came to know that petitioner/partner Smt. Sakshi Sharma had already taken Rs. 35,00,000/- from one Neelam Dahiya and executed mortgage by pretending that petitioner was giving as security her

25% share out of 75% share. Complainant maintained that petitioner at the time of execution of agreement dated 23.08.2022 was owner to the extent of 8.34% only but she with dishonest intention executed agreement of 25% share. Complainant also narrated that when he complained to the petitioner, she and her husband demanded sum of Rs.65,00,000/- to clear outstanding amount of Smt. Neelam Dahiya. Petitioner and her husband started blackmailing the complainant who finding himself cheated reported the matter to police to take action against accused.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is a household lady and she is mother of a four years old child. The genesis of the dispute is purely civil in nature, arising out of one agreement to sell executed between the complainant and the petitioner and one Neeraj Kumar. The complainant never came forward to discharge his liability by paying the entire amount agreed in the said agreement to sell and the maximum sentence provided for the offences under which the FIR(supra) has been registered, is upto 07 years and the petitioner is behind the bars since 30.01.02024 and she is having clean antecedents and not involved in any other case. Moreover, the entire case of the prosecution is based upon the documentary evidence, which is already in possession of Investigating Agency. It is further contended that co-accused namely Neeraj Kumar has already been granted the concession of interim anticipatory bail by this Court vide order dated 08.02.2024 passed in **CRM-M-6641-2024**.

4. Per contra, learned counsel for the complainant submits that one more complaint by some other person has been filed against the petitioner, who has been duped by her and the petitioner has not discharged her liability as per terms and conditions of the agreement to sell and she has not

obtained the necessary approval from the Indian Oil Corporation.

5. Learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that her role is fully established and she has been specifically named in the FIR by the complainant.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 30.01.2024 and she is a mother of a four years old child and the case of the prosecution is based upon the documentary evidence. The conclusion of the investigation and trial would take sufficient long time to conclude and no useful purpose would be served by keeping the petitioner in further incarceration. Culpability, if any, would be determined at the stage of the trial.

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.

xxx xxx xxx

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. Accordingly, the present petition is allowed. The petitioner-Sakshi Sharma is ordered to be released on regular bail, subject to her furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

7. 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.

20.03.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No