

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13427-2024 (O&M)
Date of decision: 20.03.2024

Zara Mohammad Arif

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parveen Sharma, Advocate for
Mr. Pankaj Bali, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.35 dated 31.10.2023 under Sections 419, 420, 467, 468, 471, 120-B of the Indian Penal Code, 1860, registered at Police Station Cyber Crime, Sonipat.
2. The present FIR was registered on the basis of a complaint moved by complainant Laxmi Sharma with the allegations that she has two daughters namely Jasmine and Janvi, who are doing modeling for a company, which sells ready-made clothes of children. On 12.03.2022, she received a message on her facebook ID from facebook page of one Rajeev

Ranjan for offering the role to her daughter Jasmine in TV serial “Taarak Mehta Ka Oolta Chasma” and took her mobile number. Thereafter, she received calls from mobile Nos.8104387605, 7696609841, 8108548743, 8856032769, 8850487934 (whatsapp call), 9136864913, which were in the names of Deepak and Arjun and she was demanded Rs.1.40 lac for selection of her daughter. She paid Rs.70,000/- through Paytm on 14.03.2022, Rs.25,000/- on 15.03.2022 and thereafter, Rs.2.00 lacs demanded by the accused, were also paid by the complainant through Paytm. She was assured some role of her daughter in Gorkha movie and demanded Rs.14.00 lacs and in this regard, an agreement was also executed. On the pretext of postponing of shooting of Gorkha movie and assurance of getting the contract entered into with Cape of Goods Film, the accused sent some forged documents i.e. Employment Agreement, Actors, Cape of Goods Film, Date 28.03.2022, Cape of Goods Films, Talent Release Agreement, Contract Agreement (UTV) through Whatsapp and email ID, they demanded more money and the complainant paid Rs.18.50 lacs through Phone Pay, Google Pay, Paytm. Thereafter, they did not even respond to the calls made by the complainant, therefore, they cheated her. Thus, she prayed for taking legal action against Disha Gupta and Rajeev Ranjan.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. Admittedly, the petitioner is not named in the FIR and she is nominated only on the basis of disclosure statement made by co-accused, while in police custody, which has no evidentiary value in the eyes of law and she is not the beneficiary of the

alleged fraud committed with the complainant. Even as per police investigation, Paytm and Google Pay numbers belong to co-accused. It is further contended that the petitioner is a household lady and she is not involved in any other case and has clean antecedents.

4. *Per contra*, the learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that her role is clearly established, as she induced the complainant to pay Rs.18.50 lacs on the pretext of providing leading role to daughter of the complainant in popular TV Serial “*Taarak Mehta Ka Oolta Chasma*”.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is a lady; she is behind the bars since 08.12.2023 and is not involved in any other case; investigating agency has already concluded the investigation and presented the final report on 29.02.2024; trial of the case has not commenced, as none of the prosecution witness, out of cited 10 PWs, has been examined till date. The culpability, if any, would be determined at the time of trial. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

6. A two Judge Bench of the 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 as under: -

“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.”

7. Further, the Hon'ble Supreme Court in **Satender Kumar Antil** 's case (supra), while taking cognizance of plight of the women, held that the Court is expected to show some sensitivity and observed as under: -

“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)”

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

20.03.2024
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[HARPREET SINGH BRAR]
JUDGE

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