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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17551-2024 (O&M)

Date of Decision: 01.05.2024

MANNAT KAUR
Vs.
STATE OF PUNJAB

.. Petitioner

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Jagjot Singh Lalli, Advocate for the petitioner.

Mr. Anup Singh, AAG, Punjab.

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SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.296 dated 15.09.2023, registered for the offences punishable under Sections 376 and 120-B of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 (Challan presented under Sections 376 and 120-B IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012) at Police Station B Division, Amritsar City.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“Statement of Bindu Rani wife of Toni House No. 107, Street Sat Narayan, Maqdoompura, Jalandhar aged about 31 years Mobile No.90566-82721. It is stated that I am resident of above address and 8th class pass. At present, due to dispute with my husband, I am residing alone in at my parental place at above address since last about 6 years. I have two children, who are residing with my husband at Khanna out of which elder daughter is of about 16 years and studies in +1 in Hindi Putri Pathshala Gaushala Road Khanna and younger to her is boy Vansh aged about 12 years, who is studying in 5th Class in Government School 7 No. Peer Khana Road, Khanna. On 12.09.2023 at about 11:30 PM I was at my home, then my daughter Ria told me from her mobile No.7814540464 on my phone that I have been residing

with my cousin sister Mannat at Hotel Jod near Kahia Wala Bazar Sultanwind Road, Amritsar for about a month where brother of Mannat's husband Sagar, whose name I don't know, has been harassing me for making physical relations with him. You take me at the earlier. That on that day, reached Hotel at about 3:30 AM for taking my daughter Ria then my daughter Ria met me outside the hotel, who was in panic condition and I took her with me to my friend Jagraon. My daughter Ria told me at Jagraon that some time back, brother of Sagar husband of her sister Mannat has made physical relations with me forcibly against my wish due to which I started bleeding. The clothes having blood have been thrown somewhere by my sister Mannat. I remained ill for many days, then my sister Mannat and her husband Sagar have kept confined me in hotel room and despite being my illness, Sagar' brother again made physical relations with me and through instagram friend Mannat namely Jassi Nahar @ Lakshmi, Mannat and her husband Sagar took me to someone's house in white colour car, where one clean shaved person also made physical relations with me once. For these physical relations, my sister Mannat used to take money. Due to ill health, till date I could not come to you for giving my statement. Today I along with my daughter Ria have come and got recorded my statement. Appropriate legal action may be taken against above said accused. Statement, read over and is correct. Sd/ Bindu Rani, Sd/ Riya attested Sd/- Amanjot Kaur PS B Division, Amritsar City dated 15.09.2023."

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 15.09.2023. Learned counsel has further argued that the victim had left her house on her own accord and no specific allegations have been made against the petitioner. Learned counsel for the petitioner has further argued that the petitioner is a young unmarried lady aged about 20 years with no criminal antecedents. Thus, regular bail is prayed for.

4. Short reply, by way of affidavit of Anju Bala, PPS, Assistant Commissioner of Police, Amritsar, Crime Against Women, Amritsar has been filed by learned State counsel in the Court today and the same is taken on record. Copy thereof has been furnished to the learned counsel for the petitioner.

5. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

6. I have heard counsel for the parties and have gone through the available records of the case.

7. The petitioner was arrested on 15.09.2023 whereinafter investigation was carried out & challan was presented on 14.11.2023. Total 12 prosecution witnesses have been cited and culmination of the trial will take its own time. The rival contention of the learned counsel for the parties; as to whether the victim had left her house on her own accord as also whether any specific clear attribution is made against the petitioner; shall be gone into during the course of trial. The petitioner is a lady aged 20 years and hence her bail petition is required to be considered, with some latitude, in terms of Section 437 of Cr.P.C. It would be apposite to refer herein to the dicta of a judgment of the Hon'ble Supreme Court in a case of ***Satender Kumar Antil v. Central Bureau of Investigation & Anr., 2022(10) SCC 51***, which held 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."

As per the custody certificate dated 30.04.2024 filed by the

learned State counsel, the petitioner has suffered incarceration of more than 7 months & is not shown to be involved in any other case. Suffice to say, further detention of the petitioner as an undertrial is not warranted.

8. In view of totality of factual matrix of the present case, the instant petition is allowed. Petitioner is ordered to be released on regular bail on her furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent herself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit her passport, if any, with the trial Court.

- (vi) The petitioner shall give her cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change her cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

9. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.
10. Ordered accordingly.
11. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

01.05.2024

Jasmine Kaur

(SUMEET GOEL)

JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No