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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17356-2024 (O&M)
Date of decision: 16.04.2024

Harbheji

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashish Tewatia, 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.509 dated 17.06.2023 under Sections 306/34 of the Indian Penal Code, 1860, registered at Police Station Sector 58, Faridabad, District Faridabad.
2. The present FIR was registered on the basis of a complaint moved by Rajender Singh, on the allegations that his two daughters namely Sarita and Alka were married to Naresh and Bhoop Singh @ Rinku, respectively. Husband of Sarita and her mother-in-law used to beat her. On 16.06.2023 at about 10.00 p.m., his another daughter Alka saw that husband of Sarita was throttling her neck with a wire and her mother-in-law was

beating her with a danda.

3. Learned counsel for the petitioner, *inter alia*, contends that during investigation, as per opinion of the doctor, who conducted the post-mortem, offence under Section 302 of IPC was deleted and Section 306 of IPC was added. It is further contended that the petitioner is a lady aged about 60 years and she is mother-in-law of daughter of the complainant and no specific instances are alleged against the petitioner, which would breach the threshold of abetment as provided under Section 107 of IPC. Investigation of the case has already been completed and final report under Section 173 Cr.P.C. has already been presented before the learned trial Court on 16.09.2023. It is further contended that the petitioner is behind the bars since 21.09.2023 and is not involved in any other case and has clean antecedents.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that she has been specifically named in the FIR (*supra*) and there are serious allegations against her.

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 21.09.2023 and is not involved in any other case; investigating agency has already concluded the investigation and presented the final report on 16.09.2023; trial of the case is likely to take some time, as none of the prosecution witness, 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)”

8. In view of 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 Harbheji 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.

9. 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.

16.04.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No