



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

240

**CRM-M No.18227 of 2024
Date of decision : 4.10.2024**

Nirmla Devi @ Urmila**Petitioner**
Versus
State of Haryana**Respondent**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Anshumaan Dalal, Advocate, for the petitioner

Ms. Ankita Ahuja, AAG Haryana

SUMEET GOEL, J. (ORAL)

1. The instant petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.270 dated 7.5.2023, under Sections 304-B, 498-A, 406, 34 and 201 of the IPC, registered at Police Station Tosham, District Bhiwani, Haryana.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

‘It is stated that I Deepak Sharma son of Satish Sharma, resident of Sector-6, Bahadurgarh, am presently posted at Civil Hospital Bahadurgarh. That we are two brothers and sisters. My sister Ankita was married with Chetan son of Suresh resident of Kairun, about 2 & half years back as per Hindu Rites and Ceremonies by us. We had given a lot of dowry and alms in the marriage. After some days of the marriage, in-laws of my sister Ankita started to harass her and started to demand money. That I gave Rs.50,000/- cash to Chetan son of Suresh twice, but despite that Chetan son of Suresh, Urmit wife of Suresh, Neha daughter of Suresh, Suresh son of Murari, did



not understand. That they used to repeatedly taunt my sister and harass her for not bringing more dowry and Uma Shankar son of Sant Lal and Madan son of Salal, village Bapora, both used to ask Urmil mother-in-law of my sister to beat Ankita and throw out of her house by coming to her matrimonial home. Yesterday on 06.05.2023 my sister Ankita sent a suicide note written by her in her hand on my whatsapp. That I had given Rs.4 Lakhs in the account of mother-in-law of my sister prior to marriage also, but they kept on harassing my sister. Yesterday also my sister was beaten by her mother in-law Urmil and husband Chetan and harass her, due to which my sister consumed sulphas tablets kept at home. Regarding this my sister told my mother on phone, then I and my family members reached Mittal Hospital, Bhiwani after arranging vehicle. My brother-in-law has brought my sister to then due Mittal Hospital, to deteriorating condition of my sister brought her Kainos Hospital Rohtak, who died today, during treatment. So, it is prayed to you, strictest legal action be taken against Chetan son of Suresh, Neha daughter of Suresh, Suresh son of Murari, Urmil wife of Suresh, Uma Shankar son of Sant Lal, Madan Lal son of Sant Lal, village Bapora, and justice be done to my sister. Sd/- Dr. Deepak.'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 13.5.2023. Learned counsel has further argued that the marriage of the deceased with the son of the petitioner took place on 25.11.2020 and she passed away on 6.5.2023 but no complaint was ever made by the deceased or her family on account of any dowry harassment being meted out to her. Learned counsel, thus, submitted that offence under Section 304-B of IPC is not made out from the factual matrix of the case. Learned counsel for the petitioner has further argued that the deceased was pursuing Ph.D. degree from Social Work Department, Kurukshetra University and was unable to complete her dissertation and it is on this account that she has committed suicide. Thus, regular bail is prayed for.



4. Learned State counsel has opposed the present petition by arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail. Learned State counsel seeks to place on record custody certificate dated 3.10.2024 in Court, which is taken on record.

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

6. The petitioner was arrested on 13.5.2023 whereinafter investigation was carried out and challan was presented on 9.8.2023. Total 23 prosecution witnesses have been cited, out of which 5 stand examined and 3 have been given up. It has not been disputed that all the private prosecution witnesses since stand examined. The rival contention of learned counsel for the parties; as to whether the offence under Section 304-B of the IPC is made out against the petitioner, the weightage/ veracity of the argument raised by learned counsel for the petitioner that no previous complaint was ever made by the deceased or her family on account of any dowry harassment to the deceased & as to whether the deceased was suffering from any kind of depression on account of her allegedly not having completed her dissertation in the Ph.D. degree programme being pursued by her; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution



evidence.

7. The petitioner is a lady aged about 54 years & hence, bail petition ought to be considered in view of proviso to Section 480(2) BNSS. It is pertinent to mention herein that the proviso to Section 480 BNSS, 2023, is *pari materia* with proviso to Section 437 Cr.P.C., 1973. In this regard, it would be apposite to refer herein to a judgment passed by this Court on 14.03.2024 in **CRM-M-11503-2024** titled as '**Ravinder Kaur Vs. State of Punjab**' (dealing with proviso to Section 437 Cr.P.C.), relevant thereof reads as under:

"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 Vs. 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 custody certificate dated 3.10.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of more than one year and four months and is not shown to be involved in any other case.

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

8. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his 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 himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cell-phone number to the Investigating Officer/SHO of concerned Police Station and shall not change his 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.

(SUMEET GOEL)
JUDGE

4.10.2024
Ashwani

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