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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20445-2024 (O&M)
Date of decision: 07.05.2024

Manpreet Kaur @ Neetu

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kanwaljeet Singh, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in case bearing FIR No.48 dated 10.02.2024 under Sections 363 & 366-A of the Indian Penal Code, 1860 (Section 376-D of IPC and Sections 17 & 4/6 of the Protection of Children from Sexual Offences Act, 2012 were added later on), registered at Police Station Civil Lines Batala, District Gurdaspur.
2. The present FIR was registered on the statement of Narinder Kaur on the allegations that her son Shingara, who is a truck driver, divorced his wife about 15 years ago and he has two daughters. On 08.02.2024, she

along with her grand-daughters slept at night and on 09.02.2024, in the morning, when they woke up, her grand-daughters were not found present in the house. She searched for them, but they were not found. She has apprehension that some unknown persons have enticed away her grand-daughters on the pretext of marriage.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is not named in the FIR (*supra*) and she has been falsely implicated. The FIR (*supra*) was registered after a delay of 02 days from the date of alleged occurrence. Allegation against the petitioner is that she forced the prosecutrix to give statement in favour of her brother in another FIR No.316 dated 20.11.2023 under Sections 363 & 366 of IPC, registered at Police Station Civil Lines, Batala, District Batala. It is further contended that the petitioner has no role in the alleged incident and she is a married lady living at Amritsar in her matrimonial house. It is also contended that the petitioner is pregnant and her incarceration would affect the health of her unborn child.

4. On 30.04.2024, learned State counsel sought time to file latest medical certificate of the petitioner with regard to her pregnancy.

5. Learned State counsel has produced on record affidavit of Navdeep Singh Behniwal, Additional Superintendent, Central Jail, Gurdaspur dated 06.05.2024 on behalf of State of Punjab. The medical report attached with the affidavit as Annexure R-1 indicates that the petitioner is having pregnancy of 17 weeks. Learned State counsel opposes the prayer

made by the petitioner on the ground that there are serious allegations against her. However, he could not controvert the fact that the petitioner is pregnant and she is not involved in any other case.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner was arrested on 23.03.2024 and since then, she is behind bars; she is pregnant and her incarceration would affect the health of her unborn child and she may require further medical assistance at the time of delivery. 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.

7. A two Judge Bench of the Hon'ble Supreme Court in ***Satender Kumar Antil Vs. 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.”

8. 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)”

9. 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 Mandeep Kaur @ Neetu is ordered to be released on regular bail during trial on her furnishing bail/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

10. 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.

07.05.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No