

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31840-2024
Date of decision: 11.07.2024

Kulwinder Kaur ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. B.S. Bhalla, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.13 dated 11.03.2020 under Sections 354/341/506 of IPC (Section 376 of IPC added later on) and Section 6 of POCSO Act, 2012, registered at Police Station Jhander, District Amritsar.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that she used to go to computer center at Amritsar for taking classes and at that time, the main accused, namely, Karan Singh, did wrong things with her in connivance with his mother, namely, Kulwinder Kaur (the petitioner herein). Thereafter, they extended threat to her by showing pistol to kill her and her brother if she will not solemnize court marriage with Karan Singh and also resorted to physical violence by slapping her and abusing her and, thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case for the reason that she is the mother of the main accused and she is behind the bars since 12.09.2023.

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The petitioner has absolutely no role in the alleged incident and just to wreak vengeance on the son of the petitioner, the petitioner has been entangled into the dispute. He further submits that the petitioner is a household lady and victim/prosecutrix has already been examined as PW-1.

The learned State counsel has filed the custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that she was earlier declared proclaimed offender and the prosecutrix/victim has levelled specific allegations in her statement recorded under Section 164 Cr.P.C. before the concerned jurisdictional Magistrate while deposing as PW-1.

A two Judge Bench of 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:

"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."

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 12.09.2023 and she is a lady and not the main accused of the offence, breaching the threshold of Section 6 of the POCSO Act. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case is progressing at snail's pace as only 02 out of 19 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. 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.

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

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.

(HARPREET SINGH BRAR)
JUDGE

11.07.2024

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