

were hitting stone blocks on them, whose names are Inderjit Singh @ Gullu armed with iron rod, Sukhpreet Singh @ Sukha armed with wooden baseball, Jagseer Singh @ Seera armed with stick '*danda*', Manjot Singh @ Jota armed with rod, Jaspreet Singh @ Sadama, Gurpreet Singh, Sandeep Kaur @ Soni, all residents of Bassian and two unknown persons were also with them. In the meantime, Jagseer Singh @ Seera raised *lalkara* that today teach them lesson for stopping to cut the wood. Then while, the complainant was looking at Jaspreet Singh @ Sadama, Gurpreet Singh, Sandeep Kaur @ Soni, three of them caught his son from his arms and Inderjit Singh @ Gull, with the intention to hit his son Sandeep Singh, gave iron rod blow, which he was holding in his hand, at his head and Manjot Singh @ Jota gave iron rod blow, which he was holding in his hand, on the forehead of his son Sandeep Singh, which after hitting little at the forehead crossed. Sukhpreet Singh @ Seera gave baseball blow, which he was holding in his hand, at the right arm of Sukhraj Singh @ Saaji. Then Sandeep Kaur @ Soni snatched the Apple mobile phone from the pocket of lower worn by his son and Jaspreet Singh @ Sadama, Gurpreet Singh @ Guri and the unknown persons with them took away the motorcycle of Bajaj Company to their home, after snatching it from the friend of his son namely Harvinder Singh @ Gaggi, who came at the spot. The complainant's son fell down, on becoming unconscious due to injuries. The complainant raised alarm of *maarta maarta*, then all of them ran away from the spot along with their respective weapons.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is a household lady and has been falsely implicated in the present case. Admittedly, the petitioner has not caused any injury on the person of the deceased and the allegations against the petitioner are that she along with two other persons had caught hold of the deceased, while, the main accused Inderjit

Singh and two other persons inflicted injuries on the person of deceased. It is further contended that the case set up by the prosecution is not plausible and whether the petitioner could be made liable with the aid of Section 148 and 149 of IPC, would be a moot point to be determined by the trial Court, for the offence under Section 302 of IPC. The petitioner is behind the bars since 05.01.2023 and the investigating agency has already concluded the investigation.

4. Per contra, learned State counsel assisted by learned counsel for the complainant, vehemently opposes the grant of regular bail to the petitioner on the ground that the petitioner has been named in the FIR and she has taken active part in the commission of the crime and she has also snatched the mobile phone of the deceased, which has been recovered pursuant to the disclosure statement made by the petitioner. Custody certificate filed by the respondent-State is taken on record.

5. Many women who commit cognizable offenses are poor and illiterate. In many cases, they have children to take care of, and there are many instances when the children have no other option but are to live in prisons with their mothers. A two Judge Bench of the Hon'ble Supreme Court in ***Satender Kumar Antil vs Central Bureau Of Investigation, (2022) 10 SCC 51*** has taken cognizance of their plight and held that in cases pertaining to women, the Court is expected to show some sensitivity. Speaking through Justice M.M. Sundresh, the following observations were made:

“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).”

6. Having heard learned counsel for the parties and after perusing the records of the case, it transpires that the petitioner is behind the bars since 05.01.2023 and as per custody certificate, she has already undergone a custody of 01 year, 01 month and 23 days as on 27.02.2023 and she is not involved in any other case. The trial of the case is likely to take long time to conclude as out of 24 witnesses cited by the prosecution, none has been examined so far. Culpability, if any, would be determined at the time of the trial. No useful purpose would 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.

7. Keeping in view the facts and circumstances of the case, the present petition is allowed without commenting upon the merits of the case lest it may prejudice the outcome of the trial and the petitioner-Sandeep Kaur @ Soni 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.

8. 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.

February 28, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |