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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35880-2024 (O&M)

Date of Decision:01.08.2024

KAMNA

..... Petitioner

Versus

STATE OF HARYANA

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Ramnish Puri, Advocate
for the petitioner.

Mr. Raman Sharma, Addl. AG, Haryana.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Section 439 of Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’) is seeking regular bail in FIR No.0325 dated 07.06.2021, under Sections 313, 376(3) and 506 of Indian Penal Code, 1860 and Section 6 of POCSO Act, 2012 (201, 304 & 376 DA of IPC added later on) registered at Police Station Gharaunda, District Karnal.
2. The case of prosecution is that petitioner carried out abortion of the victim who was impregnated by her close relative. The victim died within three months from the date of abortion. The victim in her statement disclosed the atrocities that led to her condition.
3. Mr. Ramnish Puri, Advocate submits that petitioner is not accused of commission of offence punishable under Section 376 and 506 of IPC as well as Section 6 of POCSO Act. She is charged of commission of offence punishable under Section 304, 313 and 201 of IPC. She has



already undergone incarceration of more than 2 years and 8 months. She is mother of two minor kids including one who is a specially abled child.

4. Mr. Raman Sharma, Addl. AG, Haryana submits that it is factually correct that petitioner has already undergone incarceration of more than 2 years and 8 months and she is not involved in any other offence, however, she does not deserve concession of regular bail because she was involved in the abortion of victim.

5. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

6. The petitioner is in custody since 07.06.2021 and is not involved in any other offence as confirmed by learned State counsel. Police report under section 173 of Cr.P.C. stands filed, charges stand framed. There are 31 prosecution witnesses and all witnesses have already been examined. The prosecution has not led any convincing/plausible documentary or oral evidence indicating her possibility of fleeing from justice or tampering the evidences or winning over/threatening the witnesses. As prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend herself and put forth her stand which is not possible while in custody. Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act, Companies Act are not applicable in the case in hand.

7. Proviso to clause (i) & (ii) of sub-section (1) of Section 437 Cr.P.C. provides that the court may release on bail if a person accused of commission of offence punishable with death or imprisonment for life is



‘under the age of sixteen years or is a woman or is sick or infirm’.

While advertizing with bail to a woman, a two judge bench of Hon’ble Supreme Court in **Satender Kumar Antil v. CBI, (2022) 10 SCC 51** has observed:

“69. 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 offences 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.”

The petitioner is mother of two minor children. Her incarceration is depriving both the children from love and care. She has already suffered sufficient incarceration of more than 2 and 1/2 years.

8. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaqa/Duty Magistrate concerned.

9. If the petitioner or her family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State

would be at liberty to move an application for cancellation of bail granted by this order.

10. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

11. Pending application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

01.08.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>