



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

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CRM-M No.39238 of 2024 (O & M)
Date of decision : 11.9.2024

Nisha Talwar**Petitioner**
Versus
State of Haryana**Respondent**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sanjay Verma, Advocate and
Mr. Raghav Sharma, Advocate, for the petitioner

Ms. Priyanka Sadar, AAG, Haryana

SUMEET GOEL, J. (ORAL)

1. This is the fourth petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, by the petitioner for grant of regular bail in case FIR No.127 dated 26.3.2023, under Sections 370 and 201 of IPC, Sections 4, 5, 7 and 8 of Immoral Traffic (Prevention) Act, 1956, and Section 67-A of Information Technology Act, 2008, registered at Police Station Kurukshetra University, Kurukshetra, District Kurukshetra.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

Today, on 26.03.2023, Mind Inspector Prateek Kumar, Incharge Crime Investigation Branch-2 Kurukshetra S.I. Randhir Singh no. 247. S.I. Surendra Kumar no. 111, S.I. Satnam Singh no. 116, M.C. Lalit Kumar no. 99, Mr. Pradeep Kumar no. 326, female constable Meena no. 1195, Mahila Constable Jaswinder Kaur 371/PKI or passenger vehicle Govt. HR-07GV 2970 whose driver SI Sandeep Kumar No.104. On patrolling

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duty at Mohan Nagar Chowk and when passing through Purana Das Adda and standing in front of Third Gate K.U.K. and at the same time informer met and informed that Rajeev alias Sanjay s/o Balbir Singh, r/o village outside Thanesar Kurukshetra has created a web page <https://www.tankgirls.in/kurukshetra> escort service hunt in relation to running illegal business of prostitution by supplying hunt girls and on the said web page Rajeev alias Sanjay has given his phone number 7404683105 is inserted. And after calling on this number by the customers, Nisha Talwar wife of Jagdish Talwar supplies different girls by sending photos of those girls. All the girls who are transported from Punjab by Nisha Talwar for this unethical business, are supplied for the illegal business of prostitution in Haryana by luring them with some money. Who Neesha Talwar is currently living in Karnal with a rented house. Which state has its car number UK-07BH 0995 Swift car which is a car number CH-01CA-8467 mark Skoda or color white whose driver is Bharat Bhushan son Vinod Kumar, r/o Kisan Basti Chowk, School Area Nilokhedi Karnal and another car whose number is HR-88-4189 from Ritz or colour gray whose driver is Chand s/o Bhulan Singh resident of Petal Nagar Sonipat. According to the instructions of Nisha Talwar, who were being transported from Punjab to Haryana by Nisha Talwar in their own vehicles and Keeps the girls and supplies the girls provided by Neesha Talwar for illegal money for prostitution after Sanjay negotiates with the customer. Even today Bharat Bhushan owns his car no. CH-01-CA-S-167 mark Skoda colour White and who bring the girl Honeypreet Kaur, Nawanshahar Punjab, Renu Bala, r/o Ludhiana provided by the Nisha Talwar for prostitution and in 2nd driver Chandram own his Car bearing No. HR-88-1189 Ritz color gray who bring Lovepreet Kaur and Preeti Kaur R/o Punjab for prostitution at wholly place Kurukshetra near Baham Sarovar in Kurukshetra and they alongwith girl parked their vehicle in parking in front of Bhram Sarover village Kirmitch, and Sanjay is also there with his car to contact the customers standing on the spot. The informer who is sure and convincing is found to be a serious offense 4/5/7/8 IMMORAL TRAFFICKING ACT 1950. 67,67A IT Act 2008 and 370 IPC. The charge is being sent to the police station and the number of the same would be informed by HC Pardeep Kumar No. 326. Which should be sent to the competent authority on the spot for further investigation. The case should be informed to the higher authorities with



the special report no the spot. AJ: Kurukshetra sd/- Insp Parteek Kumar Inc.'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 2.6.2023. Learned counsel has further argued that all the four prime prosecution witnesses have turned hostile and thus, trial is not likely to be culminated into conviction. Learned counsel has further argued that the petitioner has been falsely implicated into the case and there is no believable incriminating evidence against her. It has been further submitted that the petitioner is a lady of 62 years of age and hence, her bail petition ought to be considered in terms of the proviso to Section 480 (2) of Bharatiya Nagarik Suraksha Sanhita, 2023. Hence, regular bail of the petitioner 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 4.9.2024 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 2.6.2023 wherein after investigation was carried out, challan was presented and charges were framed on 4.10.2023. Total 45 prosecution witnesses have been cited, out of which only 12 have been examined till date. The rival contention of learned counsel for the parties; as to the whether there is believable



incriminating evidence against the petitioner or not; shall be gone into during the course of trial.

7. The first bail petition preferred by the petitioner was dismissed as withdrawn on 1.5.2023, relevant whereof reads as under:

- ‘1. After arguing for some time, learned counsel for the petitioner prays for withdrawal of the petition.
2. Dismissed as withdrawn.’

8. The second bail petition filed by the petitioner was withdrawn on 9.2.2024, and the relevant whereof reads as under:

- ‘Present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail pending trial to the petitioner in FIR No.127 dated 26.03.2023 (P-1), under Sections 370, 201 of the Indian Penal Code, 1860; Sections 4, 5, 7 & 8 of the Immoral Traffic (Prevention) Act, 1956 and Section 67-A of the Information Technology Act, 2000 (Amended in 2008), registered at Police Station, Kurukshetra University, District Kurukshetra.*
- (2) After arguing for some time, when this Court was not inclined to accept the prayer, learned Counsel for the petitioner on instructions wishes to withdraw the present petition “at this stage”.*
- (3) Ordered accordingly.*
- (4) It is clarified that above observations may not be construed as an expression of opinion on merits of the case.*
- (5) Pending application(s), if any, shall also stand disposed off.’*

9. The third bail petition filed by the petitioner was withdrawn on 31.7.2024 with liberty to file afresh on the same cause of action, and the relevant whereof reads as under:

- ‘1. Learned counsel for the petitioner submits that, on account of inadvertence, certain typographical errors have crept into the petition and hence he prays for withdrawal of the instant petition with liberty to file afresh on the same cause of action.
2. Ordered accordingly.



3. *Pending application, if any, shall also stand disposed off.'*

10. The petitioner was arrested on 2.6.2023 wherein after investigation was carried out, challan was presented and charges were framed on 4.10.2023. Total 45 prosecution witnesses have been cited, out of which only 12 have been examined till date. The rival contention of learned counsel for the parties; as to the whether there is believable incriminating evidence against the petitioner or not; shall be gone into during the course of trial. Learned counsel for the petitioner has submitted that after the withdrawal of the second bail petition on 9.2.2024, the remaining star private prosecution witnesses have turned hostile on 4.3.2024. Accordingly, this factum is sufficient change of circumstances to entertain this subsequent bail petition. 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 remaining prosecution evidence.

11. The petitioner is a lady aged about 62 years (As per memo of parties appended with the petition), 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.”

12. Since there is a long list of prosecution witnesses, namely 45, out of which only 12 have been examined till date, it is indubitable that the trial will, of course, take its own time. In this regard, it would be apposite to refer herein to a judgment passed by the Hon’ble Supreme Court in a case of **‘Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another’** decided in Criminal Appeal No.2787 of 2024 arising out of SLP (Crl) No.3809 of 2024’, relevant whereof reads as under:-

“19 If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20 We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly. Howsoever stringent the penal law may be.

21 We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

13. As per the custody certificate dated 4.9.2024 filed by learned State counsel, the petitioner has suffered incarceration of more than 01 year and 03 months. As per the said custody certificate, the petitioner is shown to be involved in 7 other FIRs, but in the facts and circumstances of the present case, this alone could not be a sufficient ground to decline



the concession of regular bail to the petitioner.

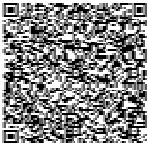
14. Keeping in view the entirety of the facts and circumstances of the case, this Court is inclined to consider the instant petition (fourth petition) for grant of regular bail.

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

15. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on her 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.

16. 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.

- 17. Ordered accordingly.
- 18. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
- 19. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

11.9.2024
Ashwani

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