



CRM-M-39356-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39356-2024 (O&M)

Date of Decision: 04.09.2024

PALO RANI

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Rajwant Singh Chahal, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

...

SUMEET GOEL, J. (Oral)

CRM-34247-2024

Application is allowed, subject to all just exceptions.

Annexures P-6 to P-8 are taken on record.

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1. The instant petition has been filed on 07.08.2024 under Section 439 of Cr.P.C., 1973 for grant of regular bail.

As per the judgment rendered by this Court titled '*Abhishek Jain Vs. State of U.T. Chandigarh and another*' (CRM-M-31808-2024) **2024PHHC085784**, the instant petition is not maintainable under Section 439 of Cr.P.C., 1973. However, keeping in view the entirety of facts and circumstances of the case especially that the instant petition pertains to regular bail, the instant petition is directed to be considered as a petition under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023.

Present petition has been filed for grant of regular bail to the petitioner in case bearing FIR No.224 dated 05.12.2021, registered for the

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offences punishable under Section 304-B of IPC (added later on & Section 302 IPC deleted), 34 IPC at Police Station Ding, District Sirsa, Haryana.

2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“Statement of Pamma Ram son of Shama Ram, R/o Pathrala, Police Station Sangat, District Bathinda, aged about 45 years, Mobile No.9872718429. Stated that I am resident of aforesaid address and labourer by profession, I have four children, three daughters and a son, the eldest is Laxmi younger to her Rajni and the youngest daughter is Rekha and the youngest is son Krishan Ram, my daughter Laxmi and Rajni are married. I have performed the marriage of my daughter Rajni, aged 22 years, with Sandeep son of Jangir Singh, resident of Narelkhera on 20.09.2020. That after marriage, my daughter Rajni has given birth to a son, who is aged about 5 months, that after marriage, Sandeep, husband of my daughter and father-in-law Jangir Singh and mother-in-law Pallo Bai, used to quarrel and torture. That on dated 05.12.2021 at about 11 o'clock in the day, I received a phone call on my phone from my daughter Rajni that 'Papa come and take me', that her husband Sandeep, father-in-law Jangir Singh, mother-in-law Pallo Bai harassed her'. Thereafter my daughter had disconnected the phone. That after about 15 minutes, I received the phone call from Jangir Singh, father-in-law of my daughter Rajni that Rajni has suffered attack. You come immediately. That on this information, I and my wife Karamjit and other family members reached in the house of my daughter Rajni in Village Narelkhera, then saw that dead body of my daughter Rajni was lying on the ground. That I and my family members has seen minutely and found that bluish mark was present on the neck of my daughter Rajni. That I have full suspicion that my daughter Rajni has been killed jointly by throttling by my son-in-law Sandeep and Jangir Singh, father-in-law of Rajni, mother-in-law Pallo Devi and Abhey Singh. That strict action be taken against my son-in-law Sandeep, Jangir Singh, mother-in-law Pallo Devi and Abhey Singh, residents of Narelkhera and I be given justice. That I have recorded my statement, heard, same is correct. LTI/ Pamma Ram, Karamjit Ram, signed in Punjabi.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 14.02.2022. Learned counsel for the petitioner has submitted that the petitioner is a lady aged about 48 years. Learned counsel

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of IPC is not made out against the present petitioner. Learned counsel for the petitioner has further submitted that the marriage between the deceased and co-accused, namely, Sandeep took place on 20.09.2020 and no complaint whatsoever was ever made by the family of the victim regarding any dowry harassment etc. Learned counsel for the petitioner has further submitted that the prosecution has cited 21 witnesses in the challan out of which only 3 have been examined till date. Learned counsel for the petitioner has further submitted that a perusal of the order dated 29.01.2024, 08.05.2024, 24.07.2024 and 29.08.2024 would reflect that the delay in culmination of the trial cannot be attributed to the petitioner. Thus, regular bail is prayed for.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

5. I have heard counsel for the parties and have gone through the available records of the case.

6. The petitioner was arrested on 14.02.2022 whereinafter investigation was carried out & challan was presented on 14.03.2022. Total 21 prosecution witnesses have been cited out of which only 3 have been examined till date. The rival contention of the learned counsel for the parties; as to whether the offence under Section 304-B of IPC is made out against the present petitioner in the factual matrix of the *lis* as also the weightage/veracity required to be attached to the contention raised by learned counsel for the petitioner that no complaint was earlier made by the family of the victim on account of any dowry harassment by the petitioner/co-accused; shall be gone into during the course of trial. This

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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.

The petitioner is a lady aged about 48 years hence her 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 *para 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.”

Earlier bail petition filed before this Court by the petitioner was withdrawn on 31.01.2024 wherein the following order was passed:

*“Learned counsel for the petitioner, after arguing for some time, wishes to withdraw the petition at this stage.
Dismissed as withdrawn at this stage.”*

Pursuant to the above said order having been passed on 31.01.2024, the trial proceedings have been fixed for hearing on 29.01.2024, 08.05.2024, 24.07.2024 as also on 29.08.2024 & the next date fixed in the trial proceedings is 18.09.2024. From the perusal of these orders passed by the Id. trial Court, it appears that the trial is not being delayed on any count whatsoever attributable to the present petitioner. 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

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“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.”

Since there is a long list of witnesses i.e. 21 prosecution witnesses cited by the prosecution in the challan and as on today, only 3 witnesses have been recorded, it is not difficult to fathom that the culmination of the trial will take its own time. As per the custody certificate dated 03.09.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 02 years, 06 months and 20 days & is not shown to be involved in any other case. Suffice to say further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the present case.

7. In view of totality of factual matrix of the present case, the instant 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.



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- (iii) The petitioner shall not absent herself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit her passport, if any, with the trial Court.
- (vi) The petitioner shall give her cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change her cell-phone number without prior permission of the trial Court/Illaq Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. 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.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

04.09.2024

Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No