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

CRM-M-41438-2024 (O&M)

Date of Decision: 03.09.2024

DALJEET KAUR

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Kamal Jindal, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

Mr. Lalit Sharma, Advocate and

Mr. Anshul Sharma, Advocate for the complainant.

...

SUMEET GOEL, J. (Oral)

CRM-33766-2024

Application is allowed, as prayed for.

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1. Present petition has been filed under Section 483 BNSS for grant of regular bail to the petitioner in case bearing FIR No.687 dated 28.12.2022, registered for the offences punishable under Sections 363 and 366-A of IPC (Sections 323, 341, 343, 354-A, 354-C, 354-D, 372, 376(2)(n) and 376-D of IPC and Sections 6, 10 and 12 of POCSO Act added later on) at Police Station Rania, District Sirsa.

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

“To, SHO, Kariwala Police Station Rania, Sir, I request that I am Balkar Singh son of Sohan Singh resident of village Bani and do manual labour work. I have four children, one of

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whom is Akashdeep aged 17 years, three girls namely Simran Kaur aged 15 years, Reshama aged 13 years, Suman Kaur aged 10 years. On 27.12.2022, at around 2/2.30 PM in the day, I, my Son-in-law Bagga Singh and my daughter Simran Kaur were at home, then girl-Simran said that I have to go to the shop, saying this my daughter Simran went to the shop. Then even after waiting for a long time, my daughter Simran Kaur did not return home, I and my wife Sumitara Kaur also searched for my daughter Simran Kaur in the neighborhood, but my daughter Simran Kaur was not found. During the search I came to know that some unknown person has taken my daughter Simran Kaur with him by making some excuse and it is Charanjeet Kaur village Bani who has helped in elopement of my daughter Simran Kaur. My daughter has long face, dark complexion, height about 5 ft 3 in, artificial top in ear, bangle in right hand, painted yellow salwar suit on body, shoes on feet. You are requested to make an inquiry from Charanjeet kaur R/o of Village Bani and complete the investigation and get my daughter Simran Kaur and take legal action against the unknown person. Balkar Singh son of Sohan Singh R/o Hooda colony Village Bani Mo. 94683-68183."

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 26.01.2023. Learned counsel for the petitioner has submitted that the challan qua the FIR in question was presented on 18.04.2023 whereinafter charges were framed on 19.05.2023. It is further submitted by learned counsel for the petitioner that the trial is not progressing as no witness has been examined till date and the factum of non-recording of prosecution witnesses cannot be attributed to the petitioner in any manner whatsoever. In this regard, learned counsel for the petitioner has placed reliance upon the zimni orders dated 18.09.2023, 19.12.2023, 27.03.2024, 30.04.2024 as also 22.08.2024 passed by the learned trial Court. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated into the FIR in question. Learned counsel for the petitioner has further submitted that another FIR bearing No.236 dated 12.04.2024 has been registered at Police Station Rania, District Sirsa,

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enticed away by some other person. Learned counsel for the petitioner has further submitted that the petitioner is a lady aged about 34 years with no criminal antecedents. 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. Learned counsel for the complainant has vehemently opposed the grant of regular bail on the ground that the allegations made against the petitioner are serious in nature & hence he ought not to be granted the concession of regular bail.

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

7. The petitioner was arrested on 26.01.2023 whereinafter investigation was carried out & challan was presented on 18.04.2023. Total 23 prosecution witnesses have been cited and culmination of the trial, but of course, will take its own time. The factum of the trial not likely to conclude in near future is further decipherable from the fact that no prosecution witness has been examined till date despite a lapse of more than 1 year and 3 months since charges were framed on 19.05.2023. 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

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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.”

Still further, the petitioner is a lady aged 34 years and hence her bail petition ought to be considered in view of proviso to Section 480 BNSS. 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**’, 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

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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.”

The rival contention of the learned counsel for the parties; regarding the role attributed to the petitioner and the evidence brought forward along with the challan filed by the prosecution as also the factum/weightage required to be attached to the second FIR got registered by the father of the victim; shall be gone into during the course of trial. 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. As per the custody certificate dated 02.09.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 01 year, 07 months and 07 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.

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8. 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.
- (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/Illaqha Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

9. 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

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State/complainant shall be at liberty to move cancellation of bail of the petitioner.

10. Ordered accordingly.
11. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

03.09.2024

Jasmine Kaur

(SUMEET GOEL)

JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No