

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

**CRM-M-43977-2023
DECIDED ON: 14.02.2024**

KAMLESH ALIAS NISHA

.....PETITIONER

VERSUS

STATE OF UT CHANDIGARH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Rekha Mahajan, Advocate
for the petitioner.

Mr. Anupam Bansal, Addl. P.P., for U.T., Chandigarh.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked for the second time under Section 439 Cr.P.C., for grant of regular bail to the petitioner in FIR No.113, dated 30.06.2019, under Sections 370 IPC, registered at Police Station Mauli Jagran, District U.T., Chandigarh.

2. Learned counsel for the petitioner vehemently contends that the instant FIR is a concocted story on tutoring of the complainant by her massi with whom she was residing and even the complainant was not treated properly by her. She further contends that the petitioner has given shelter to the complainant only on her asking as she was having grouse against her massi but once her massi came to know that she is residing with the present petitioner, her massi started extending threats for implicating her in a false case, which resulted into her correct apprehension and the instant FIR came to be lodged on 30.06.2019, whereas the complainant, aged 19 years was residing in the premises of petitioner since 03.06.2019. The martial status as

well as social status have also been highlighted by learned counsel for the petitioner to assert that she is a married women, aged 35 years and is residing in the premises for quite a long time, who has never been involved in any such alleged offences as there is no complaint or any kind of FIR against her, which justified that she is a lady of clean antecedents.

3. Learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. On a specific query being putforth by this Court to the State counsel, he has failed to refer any incriminating material or any case in which the petitioner is otherwise involved except in the instant FIR.

4. Be that as it may, considering the custody period i.e. 09 months and 27 days, for which the petitioner has already suffered incarceration behind the bars and the fact that the petitioner is not involved in any other case, meaning thereby she is not a habitual offender and the arguments addressed by learned counsel for the petitioner which seems to have force atleast for consideration of grant of regular bail.

5. This Court is sanguine of the fact that according to the proposition settled by the Apex Court that keeping somebody behind the bars, till his guilt is proved, for an indefinite period amounts to infringement of his right to life and liberty, as enshrined under Article 21 of Constitution of India and is against the principle "*bail is a rule and jail is an exception*".

6. In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on her furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

7. In the afore-said terms, the present petition is hereby allowed.
8. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

14.02.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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