



CRM-M-43903 of 2024 **1**

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

222

**CRM-M-43903 of 2024
DATE OF DECISION :- 10.09.2024**

Pooja alias Renu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr.Samir Rathaur , Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No.554 dated 27.08.2016, registered for the offences punishable under Sections 346 (subsequently omitted Section 346 and added Sections 363,366A,370,328 of IPC and 6/17 of POCSO Act) at Police Station Surajkund, District Faridabad, Haryana.

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

“The SHO Police Station Surajkund Faridabad. Sir, it is submitted that I Aarti wife of Sh. Dalip Kumar is resident of G-62, Lane No.7. Shiv Durga Vihar, Lakkarpur. My husband is engaged in work of painting, I have four daughters and one son. My third daughter Shivani is 12 years of age. Shivani was sleeping with me on 22.08.2016 in the night with me in my house. In the night Shivani went somewhere without telling us. She has not returned back as yet. I have suspicion someone may not have confined my daughter. My daughter studies in Eighth class in Railway Colony,



Tuglakabad, Delhi. Shivani has fair complexion, long face, slim and active body, 4-10", aged 12 years and has scar mark on right eye. She is wearing white shirt, black salwar and brown color sandals. Till now I was searching her on my own and now have come to you. FIR may kindly be registered and my daughter be traced. Sd/-Aarti Mob. 8376933976. Police Action: At police station I, ASI along with constable Pratap Singh 2886 was present at Dayalbagh Chowk while patrolling, above-mentioned Aarti met me and gave the aforementioned application. From the perusal of the application offence under section 346 IPC is found to have been committed and the writing in this regard is being sent to police station through Constable Pratap Singh 2886 for registration of case. Case number be informed after registering the same. I, ASI along with complainant is going to the house of complainant, G-62, Lane No.7, Shiv Durga Vihar, Lakkarpur, Faridabad. At Dayalbagh Chowk Faridabad. Sd/- Shatish ASI PP Dayalbagh PS Surajkund, Faridabad. DT 24.08.2015 AT 05.40 PM. At Police Station: - Upon receipt of the above-mentioned complaint Case No.554 dated 24.08.2016 under section 346 IPC Police Station Surajkund District Faridabad is being registered and the computer copies after being prepared are being sent to the Ilaqa Magistrate, and concerned higher officers through post. Copy of police file alongwith original complaint is being sent through messenger constable to the I/o at the spot."

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 19.09.2022. Learned counsel has further submitted that earlier one PO challan was presented against the petitioner on 19.07.2018 and thereafter challan was presented against the petitioner on 20.12.2022. Learned counsel for the petitioner has further submitted that co-accused namely Roopa Kashyap has been acquitted by a Division Bench of this Court vide judgment dated 30.08.2019 passed in CRA-D-511-DB of 2018, relevant whereof reads as under :-

"19. In view of the above, we allow this appeal and set aside the



judgment of conviction 05.05.2018 and order of sentence dated 07.05.2018 passed by the Additional Sessions Judge, Faridabad. The appellant is acquitted of the charges framed against her. Appellant be released forthwith, if not required in any other case.”

Learned counsel for the petitioner has further submitted that the petitioner is a lady aged about 24 years and hence her bail petition ought to be considered in view of proviso to Section 480(2) BNSS. In this view of the matter, learned counsel has prayed for grant of regular bail.

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. Learned State counsel seeks to place on record custody certificate dated 09.09.2024 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 is in custody since 19.09.2022 whereinafter investigation was carried out and challan stands presented on 20.12.2022. The petitioner is a lady aged about 24 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.

XXXX

XXXX

XXX

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.”

The rival contention of learned counsel for the parties regarding weightage required to be attached to the judgment passed by a Division Bench of this Court on 30.08.2019 in the case of the co-accused; 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 prosecution evidence. As per custody certificate dated 09.09.2024 filed by learned State counsel, the petitioner has already suffered incarceration for more than 01 year and 11 months. The said custody certificate reflects that the petitioner is said to be involved in another FIR No. 611/2022 registered for offences under Section 174-A of IPC at Police Station Surajkund, Faridabad but this factum by itself would not be sufficient to decline the concession of regular bail to the petitioner in the instant case.

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

7. 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 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 cell-phone number to the Investigating Officer/SHO of concerned Police Station and shall not change her cell-phone number



CRM-M-43903 of 2024 **6**

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.

(SUMEET GOEL)
JUDGE

10.09.2024
P.Singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No