



and many times the dispute arose for the same reason and thereafter, relatives of the complainant used to sort the abovesaid dispute and near about 2/3 times the compromise was effected orally on the *panchayat* level with the sister of the complainant and her in-laws family members. Sister of the complainant, namely, Vipanjot Kaur had no mobile and her husband and father-in-law used to arrange the talk between the complainant and his sister and behind his back, they used to raise dispute. On 04.07.2024 at about 8:00 P.M., the complainant received a call on his mobile No.83609-50529 of father-in-law of his sister namely Ajmer Singh from his mobile No.98789-24976 and upon the same, the elder *nanad* of his sister namely Varinder Kaur @ Vicky wife of Davinder Singh (petitioner herein) talked and said that his sister Vipanjot Kaur is raising dispute with them without any reason and from the back, the voice of loud screaming was coming and on 05.07.2024 at about 3:00/3:30 P.M. on the mobile phone of the complainant's mother, namely, Kuldeep Kaur i.e. 81960-76821, the petitioner/elder *nanad* of his sister called from her mobile No.98154-80751 and said that she should come and see her daughter, otherwise, she will raise the allegations on them and thereafter, mother of the complainant told him that in-laws family members of Vipanjot Kaur have called and they have told the abovesaid things and he should go quickly to in-laws house of Vipanjot Kaur and inquire about the same and thereafter, the complainant alongwith his *mama* Amritpal Singh and other respectable persons reached at in-laws house of his sister and they saw that the dead body of his sister Vipanjot Kaur was lying on the cot, in the *verandah* and after checking, they came to know that there were marks around her neck and the complainant has full confidence that father-in-law of his sister (deceased) namely Ajmer Singh, her husband Parminder Singh and her *nanad* Varinder Kaur @ Vicky



(petitioner herein) had put *chunni* around the neck of his sister Vipan jot Kaur and thereafter, hanged her with the fan and killed her. Hence, the FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the marriage of the deceased with brother of the petitioner taken place on 16.02.2020, whereas, the petitioner was already married at that time and was residing at her matrimonial home and dispute between the brother of the petitioner and deceased was due to temperamental differences. There are no allegations against the petitioner that she has subjected the deceased to any cruelty on account of demand of dowry immediately before the death. As such, necessary and effective ingredients constituting the offence under Section 80 of BNS, 2023 are clearly missing. Further, there is nothing on record to prove that the petitioner shared common intention with other accused as provided under Section 3(5) of BNS, 2023. The Investigating agency has concluded the investigation and filed the final report under Section 173 Cr.P.C. and the petitioner is behind the bars since 19.07.2024. Furthermore, the petitioner is mother of a 16 months old female child and there is no one in the family to look after her.

4. *Per contra*, learned State counsel opposes the grant of regular bail to the petitioner on the ground that the petitioner has called the mother of the deceased and she was present at the spot on the date of death. As such, the petitioner is not entitled to any relief. Learned State counsel produces custody certificate, which is taken on record.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind the bars since 19.07.2024 and she is not involved in any other case. The



investigating agency has already concluded the investigation and has submitted the final report under Section 173 Cr.P.C. The trial of the case is likely to take long time, as out of 17 witnesses cited by the prosecution, none has been examined. Further incarceration of the petitioner, without there being the prospect of the conclusion of the trial, in the near future, would be violative of her rights under Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

6. Many women who commit cognizable offenses are poor and illiterate. In many cases, they have children to take care of, and there are many instances when the children have no other option but are to live in prisons with their mothers. A two Judge bench of the Hon'ble Supreme Court in ***Satender Kumar Antil vs Central Bureau Of Investigation, (2022) 10 SCC 51*** has taken cognizance of their plight and held that in cases pertaining to women, the Court is expected to show some sensitivity. Speaking through Justice M.M. Sundresh, the following observations were made:

“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. (emphasis supplied).*

7. In view of the above, the present petition is allowed and the petitioner-Barinder Kaur *alias* Vicky *alias* Varinder Kaur is ordered to be released on regular bail during trial on her furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

8. Nothing observed hereinabove shall be construed to be an expression of opinion by this Court lest it may prejudice the trial. The learned



trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

September 13, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |