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CRM-M-46894-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46894-2024 (O&M)

Date of Decision: 16.10.2024

LUXMY ALIAS SUMANYA

.. Petitioner

Vs.

STATE OF PUNJAB AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Munish Puri, Advocate for the petitioner.

Mr. Yuvraj Singh Tiwana, Asstt. A.G., Punjab.

Mr. Amit choudhary, Advocate
for respondent No.2.

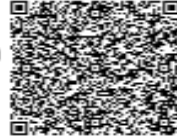
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SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483 BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No.0112 dated 30.08.2024, registered for the offences punishable under Sections 65(1), 127(1) and 61(2) of BNS, 2023 and Section 6 of POCSO Act at Police Station Division No.2, Pathankot.

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

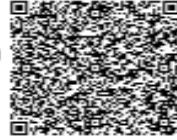
“Statement of Simran Kumari S/o Kuldeep Kumar R/o 4 marla Quarter Ram Nagar, Pathankot, aged about 13 years, mob. 9041307685. Stated that I am the resident aforementioned address and studying in 7th class in Senior Secondary Smart School K.F.C. Pathankot. We are two sibling and I am elder to my brother in my family. My parents used to quarrel with each other. Person namely Gautam had became friend of my mother from previous 7 years and when my family came to know about Gautam s/o Balak Ram, that it was revealed that he is resident of adjoining street of our house. Gautam used to daily meet my mother. On 15/07/2024 my mother after quarreling with my



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father left my younger brother with my father and took me alongwith her at rented house at Saingarh. Gautam was always having bad eye on me. On 28/08/2024 Gautam came to the house of Laxmi W/o Deepak to meet my mother and I also went to the house of Laxmi with my mother. Gautam molested me while taking me to vacant room upstairs of Laxmi. My mother pressed my mouth and Gautam rubbed his hand on my breast and try to insert finger and fingers on the place of my toilet and even try to insert finger on the place of my latrine. I screamed but my mother has already pressed my faced. After this incident my mother and Gautam locked me t in that room and went away. I raise alarm upon hearing my noise, owner of house Laxmi's father open the lock of the room and I while trembling ran outside and my grandfather meet me near Guru Nanan Park, who does the driving of auto. I told him to took me home and my grandfather told that I will bring all the family because I will not take you alone. I was standing there that Laxmi saw me and started beating me and called my mother Shweta and told her that your daughter Simran is with her. Came here and take her. After sometime my mother Shweta came and started beating me, while my mother Shweta was beating me, at that time my father and my grandmother came there, my mother Shweta scolded my father and grandmother and she pull me and took me to house of Laxmi. Then my father gave information at Police Station Division No.2, that my wife Shweta took my daughter Simran forcefully alongwith her. On 28/02/2024 my mother came to Police Station where I was sent alongwith my father to his house. After reaching home suddenly I got pain in my body and my aunt took me to Govt. Hospital Pathankot, where I got admitted in Govt. Hospital. I narrated whole of occurrence happened with me to my aunt in Hospital. Legal action be taken against Gautam S/o Balak Ram and my mother Shweta and Laxmi and justice be done to me. Sd/-Simran in English, Sd/- Priya in English attested Rajinder Kaur INSP Police Station Div. 2 Pathankot.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 04.09.2024. Learned counsel for the petitioner has submitted that no active role has been attributed to the petitioner, insofar as the sexual assault upon the minor victim, is concerned. Learned counsel for the petitioner has further submitted that the petitioner is a lady aged about 32 years and is required to take care of her two minor daughters and ailing father as well & her husband is serving in the ITBP. Thus, regular bail is



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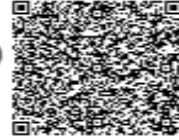
4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

5. Learned counsel for complainant/respondent No.2 has vehemently opposed the grant of regular bail on the ground that the allegations made against the petitioner are serious in nature & hence she 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 is in custody since 04.09.2024 and the matter is still under investigation. The perusal of the case record indicates that the petitioner is not shown to be actively involved for conniving into the sexual assault against the victim. However, since the matter is still under investigation, this Court does not deem it appropriate to delve further into this aspect of the matter. 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 32 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:

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*“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:*

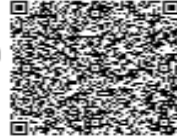
51. Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the accused person is sick or infirm. In a case pertaining to women, 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.”

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As per the custody certificate dated 15.10.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 01 month and 10 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.

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/Illaq Magistrate.



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(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 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.

16.10.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No