



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

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**CRM-M No.47365 of 2024
Date of decision : 18.10.2024**

Bala Devi**Petitioner**

Versus

State of Haryana**Respondent**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Mohit Uppal, Advocate and
Ms. Ankita Chauhan, Advocate, for the petitioner

Ms. Mahima Yashpal, DAG, Haryana

SUMEET GOEL, J. (ORAL)

The instant petition has been filed on 13.9.2024 under Section 439 of Cr.P.C. for grant of regular bail.

As per the judgment rendered by this Court titled as '*Abhishek Jain v. State of U.T. Chandigarh and another*' (CRM-M No.31808 of 2024, 2024:PHHC:085784), the instant petition is not maintainable under Section 439 Cr.P.C., 1973. However, keeping in view the entirety of facts and circumstances of the case especially that the instant petition pertains to regular bail, the instant petition is directed to be considered as a petition under Section 483 of BNSS, 2023

1. Present petition has been filed for grant of regular bail to the petitioner in case FIR No.137 dated 23.3.2024, under Sections 304-B and 34 of the IPC, registered at Police Station Sadar Bhiwani, District



Bhiwani.

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

'To, SHO sir, P.S. Sadar Bhiwani. Respected sir, it is humbly submitted that I am Shyam Singh son of Sh. Mohan Singh, resident of Dhani Chang and I am an agriculturist. I have two children. Elder one is the daughter Neha aged about 26 years and younger one the son Vipul who works in Navy. My daughter Neha got married on 14.12.2022 according to Hindu rituals and traditions with Jai Prakash son of Sukhpal, Manheru. I had given the gifts and dowry to my daughter according to my capability but her in-laws were not satisfied with her dowry, after a few days only they started harassing my daughter for dowry and even physically assaulted and abused her numerous times regarding the dowry as well. That today on dated 23.03.2024, I got a call from my daughter Neha saying that I being troubled by my husband Jai Prakash and mother-in-law Bala and they can kill me today. I told her I am coming. After a while I again received a phone call saying that your daughter's conditions is not good, who is admitted in Kadam Hospital. That at the time when I reached Kadan Hospital, I saw my daughter lying in dead condition on a bed in the emergency ward. That Jai Prakash son of Sukhpal and mother-in-law Bala wife of Sukhpal and brother-in-law Deepak son of Sukhpal and sister-in-law Bavli and her husband Rinku and sister-in-law Pusha her husband Hemant, all used to harass my daughter in connection with dowry and they all have murdered my daughter. Legal action be taken against all of them. Sd/- Shyam. Applicant Shyam Singh son of Mohan Singh, resident of village Dhani Chang. Mobile No.90503 63897.'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 16.4.2024. Learned counsel has further submitted that the offence under Section 304-B of IPC is not made out against the petitioner from the factual matrix of the case as no previous complaint/grievance has been brought forward by the prosecution or the complainant regarding any dowry harassment being meted out by the



complainant. Learned counsel for the petitioner has further submitted that an application under Section 319 of Cr.P.C. has been preferred on behalf of the complainant on 18.9.2024 before the concerned trial Court in which it has been pleaded on behalf of the complainant that three more persons need to be summoned as additional accused & hence, the culmination of the trial will take further time. Thus, regular bail is prayed for.

4. Learned State counsel has opposed the present petition by 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 17.10.2024 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 was arrested on 16.4.2024 whereinafter investigation was carried out and challan was presented on 24.5.2024. Total 22 prosecution witnesses have been cited, out of which only 6 have been examined. Out of the said 6 witnesses, the complainant has been examined in chief whereinafter application under Section 319 of Cr.P.C./358 of BNSS has been preferred, which is pending adjudication. Indubitably the conclusion of the trial will take its own time. The rival contention of learned counsel for the parties; as to whether the offence under Section 304-B of IPC is made out against the petitioner from the factual matrix of the case as also the reliance/veracity/weightage of any previous complaint having been made or not regarding dowry harassment



to the deceased; 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.

7. The petitioner is a lady aged about 56 years (As per memo of parties appended with the petition), hence, 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 *pari 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.

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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 intentment 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.”

As per custody certificate dated 17.10.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of six months and two 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 case.

8. 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 his cell-phone number without prior permission of the trial Court/Illaqa 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 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.

(SUMEET GOEL)
JUDGE

18.10.2024
Ashwani

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