



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

217 CRM-M-48143 of 2024
DATE OF DECISION :- 01.10.2024

Baby ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Parampreet Singh Bajwa, Advocate for the petitioner.

Mr. Anup Singh, AAG, Punjab.

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.114 dated 10.07.2024, registered for the offences punishable under Sections 80,3(5) of BNS at Police Station Jalandhar Cantt., District Jalandhar.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

“On the statement of Vandana Devi, wife of late Shammi Kumar, resident of Mohalla Bhathnidia near Dhob ghat Road, police station city- One, MALERKOTLA, aged about 48 years. Mobile number 9814365435. It is stated that I am resident of above said address and doing household work. I have a son Sumit and one daughter Sunaina, whose marriage was solemnised by us eight months ago, with Bharat Atwal @Jolly, son of Shoba Ram, resident of house number 66, Mohalla number 30, Jalandhar Cantt, with all rituals. In this marriage, we have spent around 20 to 22 lakhs. After about 2 1/2 months of marriage, the said husband Bharat Atwal @ Jolly and his family members had started harassing my daughter Sunaina,



which my daughter Sunaina often used to tell me about this by talking on the mobile phone and said that her husband Bharat Atwal @Jolly used to tell her that you did not do this marriage according to our standard, and my daughter used to tell me that my husband used to told her that take me the car. My daughter Sunaina came to me about a month ago at the said address, and stayed for a week and told me that my husband Jolly is having an illicit relationship with a girl named Japji Sukh, and on dated 13.05.2024, she also sent the photos of the girl from Jolly's mobile phone to my mobile phone whose screenshot will be given to you after taking its print out. my daughter used to tell me that his sister Sonia, and her uncle father-in-law's daughters, Manisha and monika are involved in the illegal activities of my husband, Jolly. The said Japji Sukh was used to bring by Sonia, Manisha and Monika to her in-laws house. The last night dated 9.07.2024, My daughter had called me many times and said that I am very upset as my husband Jolly, mother-in-law baby and her sister-in-law's Sonia, Monika, Manisha and father-in-law Shobha Ram are annoying her, and mentally harassing her. You just get me out of here, otherwise they will kill me. Today at about 10:30 AM, my son Sumit was called by Bharat Atwal Jolly, who has told him that Sunaina has hanged herself with a fan and who has been admitted in the hospital and doctors had put her on ventilator, and someone known to me from Jalandhar Cantt called me and told me that Sunaina had died. Now I have come to you along with my son Sumit to give you the information. My daughter Sunaina had finished her life because of the harassment caused by husband Bharat Atwal @Jolly, mother-in-law Baby, father-in-law Shobha Ram, sister-in-laws Sonia Monika and Monisha and Japji Sukh, kindly take strict action against the above said persons. The statement was written and read and listened and which is correct. Sd/- Vandana Devi. Mob no 9814365435, Sumit mobile No.88474-04073.”



3. Learned counsel for the petitioner has argued that the petitioner is in custody since 29.07.2024. Learned counsel for the petitioner has further submitted that no complaint/grievance was earlier made by the complainant-side regarding any harassment on account of dowry to the deceased and thus the offence of Section 304-B of IPC is not made out against the petitioner. Learned counsel for the petitioner has further argued that the petitioner is a lady aged 55 years and investigation in the case is already complete. 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 30.09.2024 in Court, which is taken on record.

5. Mr. Parvez Akhtar Dhaliwal, Advocate with Mr. Arpinder Singh Sidhu, Advocate has filed vakalatnama for the complainant. The same be taken on record.

Learned counsel for the complainant has vehemently opposed the grant of regular bail by arguing that the allegations made against the petitioner are serious in nature.

6. I have heard counsel for the parties and have gone through the available records of the case.

7. The petitioner was arrested on 29.07.2024 whereinafter investigation was carried out and challan stands presented on 19.09.2024. Total 18 prosecution witnesses have been cited and culmination of trial, but of course, 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 in the factual matrix of the case; 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.

The petitioner is a lady aged about 55 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.

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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.”

This is the second bail petition preferred on behalf of the petitioner. The first petition was dismissed as withdrawn on 16.09.2024 by way of the following order :-

“CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

*Present: Mr. Parampreet Singh Bajwa, Advocate,
for the petitioner.*

Mr. Anup Singh, AAG, Punjab.

Mr. Parvez Akhtar, Advocate for the complainant.

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SUMEET GOEL, J. (Oral)

1. Faced with the situation that the matter is still under investigation, learned counsel for the petitioner seeks to withdraw the present petition at this stage.

2. Ordered accordingly.

3. Pending application(s), if any, shall also stand disposed off.”

Indubitably after the withdrawal of the first bail petition on

16.09.2024, the challan (final report by the police) has been produced.



Therefore, this Court inclined to consider the instant bail petition on account of changed circumstances i.e. presentation of the challan by the police. 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 30.09.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of about 02 months & 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 her cell-phone number without prior permission of the trial Court/Illaq 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.
12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

01.10.2024
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No