



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

351

**CRM-M No.53766 of 2024
Date of decision : 11.12.2024**

Soma Rani**Petitioner**
Versus
State of Punjab**Respondent**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sandeep Saini, Advocate, for the petitioner

Mr. Yuvraj Singh Tiwana, AAG Punjab

SUMEET GOEL, J. (ORAL)

1. Present third petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner in case FIR No.39 dated 18.4.2023, under Sections 363, 366-A, 370, 376-DA, 376 (2)(n), 323, 328, 342, 345, 346, 109, 506 and 120-B of IPC and Sections 4, 6 and 17 of POCSO Act, registered at Police Station Ghanour, Patiala, District Patiala.

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

'That the statement of Nitu Rani d/o Manmohan lal R/o Ward No.11 Ghanaur, District Patiala, Statement U/s 164 Cr.P.C. Smt. Rita Rani W/o Manmohan Lal R/o Ward No.11, P.S. Ghanaur, District Patiala has filed a writ No. CRM-W 524/2023, CRM-W 523/2023 and CRWP No. 2863/2023, regarding recording of the statement U/s 164 of Ritu Rani D/o Manmohan Lal R/o Ward No. 11, Ghanaur at Punjab and Haryana High Court. As



per the order dated 13.04.2023 on the direction of Punjab and Haryana High Court the statement of victim U/s 164 Cr.P.C. got recorded in the court of JMIC, Jaspreet singh PCS, Rajpura. The photocopy of the statement U/s 164 Cr.P.C. is received at Police Station for registration of FIR. the brief facts of the statements recorded U/s 164 Cr.P.C. are as under:-

That Neetu Rani D/o Manmohan Lal R/o of Village Ghanaur aged about 17 years U/s 164 Cr.P.C., in CRM- W 523 of 2023, CRM-W 524 of 2023 and CRWP No. 2863 of 2023, MSA 2. What you want to say? When I was 13 years old one Rohit Sharma took me to his house in Gobindgarh. Which is situated in Bidhi Chand colony, he said that he will marry me. But he did not marry me and committed sexual act with me. Then his father Shiv Kumar also had sex with me. After that Rohit Sharma's mother whose name in Soni Bahmini gave me durgs (white powder) many times. Soni Bahmini's mother also used to give me drugs (white powder). After giving me drugs both of them used to locked me in the room and they forced me to do wrong acts (Sexual Acts) with other unknown persons. The whole family used to beat me a lot. Whatever is purchased by Soni Bahmini the money is earned by selling my body. She has purchased the Kothi (House) and furniture from my earning (money), I did not understand the entire matter I was young at that time. She bought Rani Har (Necklace) with my money. I want to get the property which is purchased by them with my money. It is also requested that the property not to be given to my mother, father, maternal aunty and uncle (masad).

Do you want to say anything else?

Answer: No

SD/- Neetu Rani verified by SD/ R.O & A.C. Japreet singh JMIC, Rajpura on dated 17.04.2023, police proceedings, writ no. CRM-W 523 of 2023, CRM-W 524 of 2023 and CRWP No. 2863 of 2023 which is filed by Rita Rani W/o Manmohan Lal ward No.11 Ghanaur regarding to record the statement and conduct medical examination. In the writ petition Punjab and Haryana High Court has direction to respondent no. 2 SSP Patiala to conduct medical examination and get recorded the statement of the daughter of petitioner Rita Rani W/o Manmohan Lal vide order dated 13.04.2023. in pursuance of the order of Punjab and Haryana High Court Rita Rani brought his daughter Neetu Rani through DPO Patiala, P.S. Ghanaur came to me L/SI on dated 14.04.2023, on the same day on dated



14.04.2023, a three member board was constituted at Rajindra Hospital Patiala for the medical examination of minor girl Neetu Rani. The doctors did her medical examination. The concerned doctor conducted her dope test according to the report of dope test it is written that "Dope test done and found for 10 listed days despite this the reports of toxicology test etc are yet to be obtained. After that the victim girl Neetu Rani was discharged from the Patiala Hospital along with me L/SI and Constable Jaswinder Kaur 906 Patiala, as per the order of H.C. brought before the court of Jaspreet Singh JMIC to get recorded her statement. JMIC (PCS) Rajpura got recorded the statement U/s 164 of the victim Neetu Rani. The photo copy of the statements were taken from the court, victim handed over to the Rita Rani and Memo was prepared which was also verified by witnesses. According to the statements the offence U/s 363, 366-A, 370, 376-DA, 376 (2) (n), 323, 328, 342, 345, 346, 109, 506, 120-B of IPC and 4, 6, 7 of POCSO is found to be made out against the accused persons namely Rohit Sharma S/o Shiv Kumar, Shiv Kumar, Soni Bahmini W/o Shiv Kumar and Soma Rani (mother of Soni Bahimini) all are R/o Bidhi Chand Colony Back side Cheema petrol Pump, Mandi Gobindgarh, District Fatehgarh Sahab. Regarding the above said matter SHO of Ghanaur sent his report No. 570/5A/ P.S. Ghanaur dated 17.04.2023 to the DSP Sub-Division Ghanaur, to the SSP Sahab Patiala. On the basis of this report DSP Sahab Sub-Division Ghanaur sent one report no. 1286A DSP Ghanaur dated 17.04.2023 sent to SSP. On the basis of this report SSP Sahab directed to SHO Ghanaur N/A action as per the register directed to register the FIR against the above said accused persons namely Rohit Sharma S/o Shiv Kumar, Shiv Kumar, Soni Bahmini W/o Shiv Kumar and soma Rani. After registration of FIR No. be informed and special reports were also to be sent to Magistrate and other higher officers.'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 18.5.2023. Learned counsel has further argued that the petitioner is a lady aged about 53 years with no criminal antecedents. Learned counsel for the petitioner has further iterated that the prime allegations against the petitioner (mother) are that she alongwith her



daughter had drugged the victim whereinafter she was put to harassment, torture and sexual assault. Learned counsel has further submitted that the testimony of the prime prosecution witness namely the victim already stands recorded but the FIR-complainant (mother of the victim) is not coming forward despiteailable warrants having been issued against her for having her testimony recorded as a prosecution witness. Learned counsel has thus submitted that the trial is procrastinating and fault thereof cannot be fastened upon the petitioner. Learned counsel has further argued that the petitioner has been falsely implicated into the FIR in question as there was a consensual friendship between the victim and the grand-son of the petitioner. In this view of the matter, learned counsel for the petitioner has pressed the instant petition for grant of regular bail.

4. Learned State counsel has filed status report by way of affidavit of Harmanpreet Singh, PPS, Deputy Superintendent of Police, Sub Division Ghanaur, District Patiala dated 7.12.2024 in Court today. The same be kept on record. Copy thereof has been furnished to learned counsel for the petitioner. Learned State counsel has raised submissions in tandem with this status report filed today in Court. He seeks to place on record custody certificate dated 7.12.2024 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 18.5.2023 whereinafter investigation was carried out and challan was presented in Court on



18.7.2023. Total 30 prosecution witnesses have been cited, out of which only 6 have been examined/given up till date. It is not in dispute that the testimony of prime prosecution witness namely the victim stands recorded. The rival contention of learned counsel for the parties; as to what is the exact role of the petitioner *qua* the offence (as referred above in question) and as to whether the petitioner has been falsely implicated into the FIR in question; shall be gone into during the course of trial/investigation. 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 investigation/trial.

A perusal of the zimni orders passed by the trial Court, especially zimni orders dated 29.1.2024, 21.2.2024, 4.3.2024, 21.3.2024, 24.10.2024 and 5.12.2024 indubitably reflected that the trial is procrastinating, and the petitioner cannot be saddled in any manner with the responsibility of non-culmination of the trial.

It would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in ***Criminal Appeal No.2787 of 2024*** titled as ***Javed Gulam Nabi Shaikh vs. State of Maharashtra and another***, decided on 03.07.2024; relevant whereof reads as under:-

'19 If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime



committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly. howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.”

7. The petition in hand is the third petition for grant of regular bail preferred on behalf of the petitioner. The first regular bail petition was dismissed as withdrawn on 6.2.2024 and the second petition was dismissed as withdrawn on 7.5.2024.

Keeping in view the entirety of the facts and circumstances of the case, especially the factum of the petitioner having suffered further incarceration & the FIR-complainant not coming forward to have his testimony recorded as prosecution witness despiteailable warrants repeatedly issued against him, is sufficient in the considered opinion of this Court to favourably consider the instant (third) petition preferred on behalf of the petitioner.

8. The petitioner is a lady aged about 62 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 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.'

As per custody certificate dated 7.12.2024 filed by learned State counsel, the petitioner has already suffered incarceration for more than one year, six months and fifteen 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.

9. 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/Illaqa Magistrate.



(vii) The petitioner shall not in any manner try to delay the trial.

10. 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.

11. Ordered accordingly.

12. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

(SUMEET GOEL)
JUDGE

11.12.2024
Ashwani

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