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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54957-2024 (O&M)

Date of Decision: 11.11.2024

NIMO

.. Petitioner

Vs.

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Kulwinder Singh, Advocate for the petitioner.

Mr. Anup Singh, AAG, Punjab.

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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.230 dated 28.05.2024, registered for the offences punishable under Sections 363, 366-A and 506 of IPC (Section 4 of POCSO Act and Sections 376 and 376-D of IPC added later on vide DDR No.31 dated 10.10.2024) at Police Station City Ferozepur, District Ferozepur.

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 Gurmej Singh son of Sarja resident of Sherkhan Wala at present residing at New Janta Preet Nagar, Ferozepur City, aged about 60 years, Mobile No. 76578-42918 stated that I am a resident of above said address and doing work of labour. Since about 5/6 years, I am residing with my son Baldev Raj along with his family on a rental house at New Janta Preet Nagar, Ferozepur City after leaving the village. My son Baldev Raj has two children, elder daughter Aman is aged about 17 years (09- 05-2007) and younger to him grandson is Daksh. On dated 26.05.2024, I went for work. My daughter in law and her children were at home. At about 02:00 PM, my granddaughter Aman came outside from home then outside the home, Sajan son of Fagga, resident of village Palla Megha, Tehsil and District Ferozepur in a car bearing no. DL3 CCC 0553 make Polo colour White was standing in the street and get my granddaughter sit in the car by threatening her with the purpose to perform marriage. When my daughter in law came to know then she also ran behind the car but Sajan managed to run in the car. When I came back to home

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from work then my daughter in law Kulwinder Kaur told me the entire incident. Before this also, Sajan used to threaten my granddaughter Aman by making calls and he used to say that I have a pistol. I can take you from home at any time. I am scaring of your family. Sajan is married and he has two children. Till now, we have been searching our granddaughter Aman on our own and used to bring respectable persons at Saja's house. That his house was locked. Sajan has taken my granddaughter by threatening her on pretext of marriage. Legal action be taken against him. The statement has got been written, heard and is correct. RTI/ above said. Gurmej Singh, Correct/ Gurbinder Singh 70095-87269, Identified to be correct/ Sharma Singh ASI, Police Station City Ferozepur, Dated 28.05.2024."

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 28.09.2024. Learned counsel for the petitioner has further argued that the FIR in question is still under investigation and culmination of investigation will take its own time. Learned counsel for the petitioner has submitted that the petitioner is a lady aged about 43 years and the prime role attributed to her is in the FIR and subsequent investigation (as of now) is that she is the mother of one Sajan, who had helped the main accused, namely, Manpreet Singh to elope with the victim-Amanpreet Kaur. Learned counsel for the petitioner has further submitted that the couple, after eloping, had filed a Criminal Writ Petition bearing No.5366-2024 before this Court which came to be disposed off vide order dated 06.06.2024 and thus it cannot be said that the petitioner or her son was involved in enticing away the victim for any immoral activity. Thus, regular bail is prayed for.

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

6. The petitioner was arrested on 28.09.2024 and the matter is still under investigation. The rival contention of the learned counsel for the

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parties; as to the exact role attributed to the petitioner; the weightage required to be attached to the filing of the protection petition (CRWP-5366-2024); 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 investigation/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.

The petitioner is a lady aged about 43 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.”

As per the custody certificate dated 09.11.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 01 month and 12 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.

7. 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.



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

8. 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.

9. Ordered accordingly.

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

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

11.11.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No