



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

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**CRM-M No.56649 of 2024
Date of decision : 20.11.2024**

Pooja**Petitioner**
Versus
State of Punjab**Respondent**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. J.K. Singla, Advocate, for the petitioner
Mr. Yuvraj Singh Tiwana, AAG Punjab

SUMEET GOEL, J. (ORAL)

The instant petition has been filed on 12.11.2024 under Section 439 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 by the petitioner for grant of regular bail in case FIR No.182 dated 3.10.2023, under Sections 363, 366-A and 120-B of the IPC (Section 376 of IPC and Sections 3 and 4 of



POCSO Act, 2012 were added vide DDR No.59 dated 6.10.2023), registered at Police Station City Budhlada, District Mansa.

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

'Copy of Statement, statement of Rano Kaur wife of Kala Singh Son of Sahib Singh, resident of D.A.V. Public School, Ward No.19, Budhlada aged about 58 years, M.No.70879-23673 stated that I am resident of above- mentioned address and is working as labourer. I have two daughters i.e. elder daughter Sunny Devi who was married and younger to her Gagandeep Kaur who is 15 years old and her date of birth is 29.07.2007 and who was studying in 10+2 class. On 29.09.2023, at about 7:00 in night, my daughter Gagandeep Kaur gone from house without informing us and who has not returned back and since from that day we are searching our daughter Gagandeep Kaur but my daughter was not met us. Now, we confirmed that my daughter Gagandeep Kaur aged about 15 years enticed away under the pretext of marriage by Gurmail Singh alias Balli Son of Gurdev Singh, resident of Valmiki Basti, Ward No.13, Budhlada with the aid/help of his sister Pooja daughter of Gurdev Singh, resident of Valmiki Basti, Ward No.13, Budhlada. Pertaining to this, inquired about Gurmail Singh and his sister Pooja and who both of them were not in their house since from that day. Today, I and my elder daughter Sunny Devi were coming to Police Station for giving information pertaining to this, you met. Appropriate legal action be taken against Gurmail Singh alias Balli Son of Gurdev Singh, resident of Valmiki Basti, Ward No.13, Budhlada with the aid/help of his sister Pooja daughter of Gurdev Singh, resident of Valmiki Basti, Ward No.13, Budhlada for alluring/enticing away my daughter Gagandeep Kaur under the pretext of marriage. Statement got recorded with you, heard and correct RTI Rano Kaur.'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 2.6.2024. Learned counsel has further argued that, *assuming arguendo*, allegations made against the petitioner made in the FIR if taken to be true, still the only role attributed to the petitioner is that



she has helped the main accused namely Gurmail Singh alias Balli to entice away the victim. Learned counsel for the petitioner has further argued that the petitioner is a young unmarried lady aged about 23 years. Learned counsel has iterated that the petitioner has been falsely implicated into the FIR in question at the instance of the complainant so as to exert pressure upon the main accused who is the brother of the present petitioner. 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 19.11.2024 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 2.6.2024 whereinafter investigation was carried out and challan was presented on 30.7.2024. Total 18 prosecution witnesses have been cited and culmination of trial, indubitably will take its own time. The rival contention of learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question or not, the exact role and material put up in the challan against the petitioner; shall be seen 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.

The petitioner is a young unmarried lady aged about 23 years. It would be apposite to consider the bail petition of the petitioner in accordance with law. Accordingly, the bail petition of the present petitioner ought to be considered, with some latitude, in terms of 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 19.11.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of more than five months and sixteen 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.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his 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 himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his 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.

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.

(SUMEET GOEL)
JUDGE

20.11.2024
Ashwani

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