

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

115

CRM-M-62166-2023

Date of decision: 08.01.2024

KOMAL

....Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Omkar Chauhan, Advocate
for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

KULDEEP TIWARI. J.(Oral)

1. The instant petition, under Section 439 Cr.P.C, has been filed, for grant of regular bail, in case FIR No.170 dated 17.08.2023, registered under Sections 302, 323, 506 and 34 of IPC, registered at Police Station Babain, Kurukshetra, Haryana.
2. The petitioner being a lady of 28 years, sought the relief of interim bail on the ground of her advance pregnancy. This Court vide order dated 14.12.2023, directed the State to place on record the medical status of the present petitioner.
3. In compliance of the directions (supra), short reply by way of affidavit dated 06.01.2024 of Sh. Shivender Pal Singh, Deputy Superintendent, District Jail, Kurukshetra has been filed on behalf of the respondent-State. As per the medical status report, issued by the Medical Officer, District Jail Kurukshetra, the petitioner is having 31 weeks + 05 days pregnancy. The said medical status report clearly depicts that the petitioner is at the advance stage of pregnancy. Perusal of the medical status report further reveals that the petitioner requires constant medical aid. Perusal of the report also reveals that the petitioner is facing trial in commission of offence punishable under Section 302 IPC.
4. Learned counsel for the petitioner has placed reliance upon the

judgment passed by the ***Hon'ble Himachal Pradesh High Court in "Monika Versus State of H.P."***, wherein, after considering the right of freedom of women in motherhood, held that the women deserves the relief of interim bail. The relevant part of the same reads as under:-

"33. Good and nutritious food in prisons may give good physical health but cannot substitute good mental health. Restrains and confined spaces might cause mental stress to a pregnant woman. Giving birth in jail might cause her tremendous trauma. What difference will it make to the State and society by not postponing incarceration? What is so urgent to execute the sentence? Heavens will not fall if incarceration is postponed. There should be no restraints throughout pregnancy, no restraints during labor and delivery, and no restraints at least for a year after giving birth. Every expecting female deserves dignity during motherhood.

34. Pregnant women need bail, not jail! Courts must restore the due and sacrosanct freedom of women in motherhood pro tanto. Even when the offenses are highly grave and accusations very severe, they still deserve temporary bail or suspension of sentence, extending to a year after delivery. Further, those who stand convicted and their appeals closed also deserve similar relief, in whatever camouflage it may come."

5. Learned counsel for the petitioner further placed reliance upon the judgment passed by the Co-ordinate Bench of this Court in ***CRM-M-60285, titled as Amanjot Kaur Vs. State of Punjab***, wherein, while considering the right of the pregnant women, the Co-ordinate Bench of this Court has granted the benefit of interim bail to the petitioner. The relevant part of the same reads as under:-

"Although petitioner is alleged to have been found in possession of the contraband falling in commercial category but pregnancy of a woman is a special circumstance, in which the gravity of the offence for the time being is liable to be ignored. Giving birth to a child while in custody is not only traumatic to the mother but also to the child to be born because psyche of a child will always have an adverse impact, as and when said child is questioned about his birth. Besides, dignity is liable to be ensured to a pregnant woman, in view of fundamental right enshrined under Article 21 of the Constitution of India guaranteeing life and liberty. The interest of the child is also to be taken into consideration, who is not expected to be

exposed to the prisons, unless and until it is found that there is grave danger in releasing the petitioner on bail. No doubt that Section 37 of the NDPS Act creates fetter on grant of bail in such like cases involving possession of contraband of commercial category but at the same time when bail is considered on humanitarian grounds, said Section 37 of the NDPS Act cannot be considered to act as a blanket ban on the power of the Court to grant interim bail."

6. This Court has also examined the facts and circumstances of the present case. Since the petitioner is in her advance stage of pregnancy, and needs continuous medical attention and aid, therefore, in view of the legal prepositions as held by the Co-ordinate Bench and the other High Courts, this Court also concurred with the same and, therefore, grants the relief of interim regular bail to the petitioner.
7. Accordingly, the instant petition is allowed, and the petitioner shall be released on 16.01.2024, from the jail concerned, on furnishing requisite bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned. The petitioner shall surrender before the learned trial Court concerned on 05.07.2024, and in case the petitioner wishes to keep her newly born child with her in prison, the learned trial Court concerned, shall comply with all the directions issued by the Hon'ble Supreme Court of India in the case of ***R.D. Upadhyay Vs. State of A.P. & Ors, Writ Petition (Civil) No.559 of 1994, decided on 13.04.2006.***

08.01.2024
amandeep

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No