

CRM-M-64841-2023 (O&M)
Date of Decision: 01.02.2024

...Petitioner

V/S

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sirat Sapra, Advocate and
Mr. Kartik Sachdeva, Advocate for the petitioner.

Mr. Subhash Godara, Addl. AG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Through instant petition, the petitioner is seeking anticipatory bail in case FIR No. 211 dated 27.11.2023 registered under Sections 420, 406, 465, 467, 468, 471 of Indian Penal Code at Police Station City Jalalabad, District Fazilka.
2. On 21.12.2023, following order was passed:

“The present petition has been filed under Section 438 of Cr.P.C. seeking anticipatory bail to the petitioner in a case bearing FIR No. 211 dated 27.11.2023 registered under Sections 420, 406, 465, 467, 468 and 471 of Indian Penal Code registered at Police Station City Jalalabad, District Fazilka (Annexure P-1).

Learned counsel for the petitioner inter alia contends that the petitioner is a house hold lady and she has been made accused in the present case only for the reason that she has a joint bank account with her husband. Except that, the petitioner has no knowledge of the business dealings of her husband.

Notice of motion.

On the asking of the Court, Mr. I.P.S. Sabharwal, DAG Punjab, who is present in Court, accepts notice on behalf of the respondent-State Mr. Sandeep Arora, Advocate has put in appearance on behalf of the complainant, filed his power of attorney, which is taken on record and opposed the prayer for grant of anticipatory bail to the petitioner.

A two Judge bench of the Hon'ble Supreme Court in Satender Kumar Antil vs Central Bureau Of Investigation, (2022) 10 SCC 51 has taken cognizance of their plight and held that in cases pertaining to women, the Court is expected to show some sensitivity. Speaking through Justice M.M. Sundresh, the following observations were made:

“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.”

*In the meantime, keeping in view the law enunciated by the Hon’ble Supreme Court in **Satender Kumar Antil Vs. CBI (2022) 10 SCC 51; Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others 2010 SCC OnLine SC 137; Gurbaksh Singh Sibbia etc. Vs. State of Punjab (1980) 2 SCC 565, Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273 and Sushila Aggarwal Vs. State of NCT Delhi 2020 (1) RCR (Criminal) 833**, at the first instance, the petitioner is directed to appear before the Investigating Officer within two weeks from today and on her doing so or in the event of arrest, the petitioner shall be admitted to interim bail on furnishing of bail/surety bond to the satisfaction of the Investigating/Arresting Officer. The petitioner shall cooperate with the Investigating/Arresting Officer and abide by the conditions as provided under Section 438 (2) Cr.P.C.*

If the Investigating/Arresting Officer does not permit the petitioner to join the investigation, the

petitioner would appear before the Illaqa Magistrate, who would then summon the Investigating/Arresting Officer and direct him to join the petitioner in investigation, in terms of the order of this Court.

Adjourned to 01.02.2024.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.”

3. Learned State counsel on instructions from ASI Jagjit Singh, submits that in compliance of order dated 21.12.2023 passed by this Court, the petitioner has joined the investigation and is not required for further custodial interrogation.
4. Keeping in view the statement made by learned State Counsel the order dated 21.12.2023, is made absolute. The petitioner shall abide by the terms and conditions enumerated in Section 438(2) of Cr.P.C.
5. The petition is accordingly allowed.

01.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No