



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

CRM-M No.60518 of 2024
Date of decision : 16.12.2024

PoonamPetitioner
Versus
State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Shokeen Singh Verma, Advocate, for the petitioner
Ms. Priyanka Sadar, AAG, Haryana

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.260 dated 17.05.2024, registered for the offences punishable under Sections 302, 304-B, 34 of IPC and later on added 120-B of IPC at Police Station Gharaunda, District Karnal.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

"At this time I ASI Rajkumar No.1165/ Karnal present at Police Station and a written complaint is received in P.S SI/SHO Ramesh Chand No.1250/Karnal which is as follow: To, SHO, P.S Gharaunda. It is requested that I Sumitra Devi w/o Late Sh. Ramayan Chauhan r/o village Bishanpur P.S. Manpur, District Nalanda, Bihar. I have 4 kids, two boys and two girls. My elder girl was married through my sister and brother in law who was working in factory at Harinagar, Panipat in March, 2020 with Sangam s/o Sanjeev r/o Jamalpur. My daughter has two kids. After few days they started to harass my daughter due to less dowry and taunting that "Bhukhe Nange Ghr Ki" and thrown her out of the house



many times. My daughter came to my sister and brother in laws house. My sister and brother in law conducted panchayat in Jamalpur, where her in-laws accept their mistakes and promise to never repeat it and we let it go. All these were told to me by my daughter, sister and brother in law. 6 months ago, I went to my daughter's in law's house along with my sister and requested with folded hands to my son in law Sangam, his father Sanjeev, His mother Poonam and his brother Harsh that we are poor person and we cannot give any dowry and stayed there for a day and came back. One month ago, my daughter was thrown out of the house by my son in law Snagam and his parents. My daughter called my brother in law and he took her to Panipat and from Panipat she came to me. She stayed with me for 15 days. My daughter's in laws apologized and gave assurance not to harass. My son in law and his younger brother Harsh took my daughter to their home. Yesterday my daughter's father in law called my brother in law that my daughter has died due to illness. My sister and my brother in law told me about this and my sister and brother went to the Govt. Hospital and gave their statement. Today I came to the Govt. Hospital and saw my daughter's dead body, there are strangulation marks on her neck. I fully doubt that my daughter was murdered by my son in law, his brother Harsh, her mother in law Poonam and Father in Law Sanjeev by strangulation. Legal action should be taken against them and opinion should be taken from the Post mortem report issued by the doctor. Sd/ Sumitra Devi 74048-35070.

Police Proceedings: Today I SI/SHO present at Police Station and Sumitra w/o Lt. Ramayan Chauhan r/o Village Bishanpur P.S. Manpur District Nalanda, Bihar came along with her family members and present a complaint. As per the complaint, offence u/s 304-B, 302,34 IPC is found to be committed. Complaint given to MHC P.S for the registration of FIR.I SI/SHO went to the spot on govt. Vehicle. After registration, FIR No. Should be informed and special report should be sent to the Higher Official through E-mail." A copy of the FIR is annexed herewith as Annexure P-1."

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 25.06.2024. Learned counsel has further argued that the prime role ascribed to the petitioner qua the crime in question is of



supplying intoxicating/sleeping pills to the co-accused, which has allegedly later on been administered to the deceased, wherein upon her murder has been committed. Learned counsel for the petitioner has further argued that the prime prosecution witness namely the complainant (mother of the victim) as also one uncle (Mausa) of the victim have turned hostile and thus the trial is not likely to culminate into conviction. In this view of the matter, learned counsel has prayed for grant of regular bail.

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. Learned State counsel seeks to place on record custody certificate dated 14.12.2024 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 25.06.2024 whereinafter investigation was carried out and challan stands presented on 01.08.2024. Total 13 prosecution witnesses have been cited out of which two stand examined till date. It is not in dispute that the prime prosecution witnesses namely the complainant (mother of the victim) as also an uncle (Mausa) of the victim have been examined as prosecution witnesses and they have turned hostile. The rival contention of learned counsel for the parties; regarding the exact role of the petitioner alleged to have been shown in challan as also the weightage required to be attached to the testimonies of the hostile witnesses namely PW1 (complainant/mother of the victim) as



also PW2-uncle of the victim; 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 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. As per custody certificate dated 14.12.2024 filed by learned State counsel, the petitioner has suffered incarceration for a period of five months and nineteen days & is not shown to be involved in any other case.

The petitioner is a lady aged about 52 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.

xxx

xxx

xxx

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.”

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 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.

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

16.12.2024
Ashwani

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