



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

224

CRM-M No.62632 of 2024
Date of decision : 18.12.2024

Mandeep KaurPetitioner
Versus
State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sartaj Singh Gill, Advocate, for the petitioner
Ms. Priyanka Sadar, AAG, Haryana

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner in case FIR No.735 dated 12.9.2024, under Sections 8 and 10 of the POCSO Act, 2012, registered at Police Station Shahabad, District Kurukshetra.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

'To, the Station House Officer, Police Station, Shahbad. I am requesting you that I Balwinder Singh S/O Ranjit Singh am resident of village Goshala Shahbad. My son is student of class 9th. My son Parvesh was taking tuition from Mandip Kaur @ Simmi D/O Rishpal Singh, resident of P.W. Rest House Shahbad Markanda in the year 2023, but the tuition madam Mandip Kaur led my son Parvesh on the wrong path. My son Parvesh told me that my tuition madam does bad things with me, when



after the tuition, all the children leave, my son Parvesh stopped there and does bad things with him, she used to ask my son to kiss her, thereafter when there was no one in the house of Madam Simmi, she used to call Parvesh to her house and after taking off all her clothes, made Parvesh do bad things. Simmi madam has ruined the future of my son, therefore legal action be taken against Madam Simmi madam SD/- Balwinder Singh resident of Village Shahbad Markanda Gaushala 9729430689.'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 13.9.2024. Learned counsel has further argued that, it is in fact the victim-boy who was harassing the petitioner and in this regard the repeated complaints were made by the petitioner to the family of the victim and hence the petitioner has been falsely implicated into the FIR in question. Learned counsel for the petitioner has further argued that the petitioner is a lady aged about 40 years and is required to take care of her mentally challenged son. 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 17.12.2024 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 13.9.2024 whereinafter investigation was carried out and challan stands presented on 7.11.2024. Total 17 prosecution witnesses have been cited out of which only one witness has been examined till date. It is, thus indubitable, that conclusion



of trial 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 as also the weightage/veracity required to the complaints allegedly made by the petitioner against the victim-boy to the family of the victim-boy; 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.

The petitioner is a lady aged about 40 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.

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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 custody certificate dated 17.12.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of more than three months & 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 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

18.12.2024
Ashwani

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