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2025:PHHC:146962



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

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Date of decision: October 28, 2025

Mamta

....Appellant

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**Present:-** Mr. Mayank Gupta, Advocate for the appellant.

Mr. Deepak Kumar Grewal, DAG Haryana.

SUMEET GOEL, J. (ORAL)

Present appeal has been filed for grant of regular bail to the appellant in case bearing FIR No.23 dated 11.02.2025, registered for the offences punishable under Sections 103(1), 238, 351(3), 61(2), 49 of the Bharatiya Nyaya Sanhita, 2023 (for short' BNS') and Section 3(2)V of the SC/ST Act, 1985, at Police Station Pillukhera.

2. The gravamen of the FIR in question is that complainant, namely, Rajbir, son of Kaliya, resident of Village Morkhi, District Jind, stated that he is a permanent resident of Morkhi and works as a labourer. He has three children — his eldest daughter Manisha, who is married; his second child Rahul, aged 22 years; and his youngest son Rohit, aged 20 years. He stated that the marriage of his son Rahul was solemnized with Aarti, daughter of Balu, resident of Village Khandrai, Gohana, District Sonapat. On 10.02.2025, Rahul consumed alcohol and charas (sulpha),

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which led to a quarrel between him and his wife. Following the quarrel, Aarti left the house along with her mother. Thereafter, Rahul did not return home. Despite extensive searches made by the family, he could not be found. In the morning, Rajbir received information that a body was seen floating in a nearby drain. He, along with his family members, immediately went to the spot and found several respectable persons of the village already present there. The police were informed about the incident, and upon their arrival, the dead body was taken out from the drain. The deceased was identified as Rahul, son of the complainant. It was observed that Rahul had sustained injuries on his head, which appeared to be the cause of his death. Rajbir suspects that some unknown person inflicted the fatal injury on his son.

3. Learned counsel for the appellant has iterated that the appellant is in custody since 20.02.2025. Learned counsel has further iterated that the appellant has been falsely implicated into the FIR in question. Learned counsel has further iterated that the case in hand is one of circumstantial evidence. Learned counsel has iterated that prosecution witness, namely PW-1 – Rajbir (FIR/complainant) as also another witness, namely, PW-2 – Suresh have turned hostile; thus, the case in hand is not likely to be culminated into conviction. Learned counsel has further argued that the appellant is a lady aged 42 years. Thus, regular bail is prayed for.

4. Learned State counsel seeks to place on record the custody certificate dated 27.10.2025 as also the status report by way of an affidavit dated 27.10.2025 of Gourav Sharma, HPS, Deputy Superintendent of Police, Safidon, District Jind in the Court today, which are taken on record. Raising submission in tandem with the said status report, learned State counsel has

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opposed the present appeal by arguing that the allegations raised against the appellant are serious in nature and thus the appellant does not deserve the concession of the regular bail.

4.1. Service was affected upon respondent No.2 however none has caused appearance on behalf of said respondent.

5. I have heard counsel for the rival parties and have gone through the available records of the case.

6. The appellant was arrested on 20.05.2025 whereinafter, investigation was carried out and challan has been presented on 11.04.2025. Total 18 prosecution witnesses have been cited, out of which, only 02 have been examined till date. It is thus, indubitable that conclusion of the trial will take long time. The rival contentions raised at Bar; including weightage required to be attached to the hostile witnesses; shall be ratiocinated upon 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 appellant absconding from the process of justice or interfering with the prosecution evidence.

6.1. The petitioner is a lady aged about 42 years, 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.”

6.2. As per custody certificate dated 27.10.2025 filed by learned State counsel, the appellant has already suffered incarceration for a period of 08 months and 07 days. Further, as per the said custody certificate, the appellant is stated to be involved in other FIR(s). However, this factum cannot be a ground sufficient by itself, to decline the concession of regular bail to the appellant in the FIR in question when a case is made out for grant of regular bail *qua* the FIR in question by ratiocinating upon the facts/circumstances of the said FIR. Reliance in this regard can be placed upon the judgment of the Hon'ble Supreme Court in ***Maulana Mohd. Amir***

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Rashadi v. State of U.P. and another, 2012 (1) RCR (Criminal) 586, a Division Bench judgment of the Hon'ble Calcutta High Court in case of *Sridhar Das v. State, 1998 (2) RCR (Criminal) 477* & judgments of this Court in CRM-M No.38822-2022 titled as *Akhilesh Singh v. State of Haryana*, decided on 29.11.2021, and *Balraj v. State of Haryana, 1998 (3) RCR (Criminal) 191*.

Suffice to say, further detention of the appellant as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of above, the present appeal is allowed. Appellant 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 appellant shall remain bound by the following conditions:

- (i) The appellant shall not mis-use the liberty granted.
- (ii) The appellant shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The appellant shall not absent herself on any date before the trial.
- (iv) The appellant shall not commit any offence while on bail.
- (v) The appellant shall deposit her passport, if any, with the trial Court.
- (vi) The appellant shall give her cellphone 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 appellant 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 appellant.

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9. Ordered accordingly.
10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

October 28, 2025

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No