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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision: 15.01.2025

MANPREET KAUR

.. Petitioner

Vs.

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Rajesh Bhatheja, Advocate for the petitioner.

Mr. Anup Singh, AAG, Punjab.

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SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483 BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No.10 dated 03.04.2024, registered for the offences punishable under Sections 406, 420 and 120-B of IPC, 1860 and Section 24 of Immigration Act, 1983 at Police Station NRI, Moga, District Moga.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“To. the worthy A.D.G.P., NRI Wing, Mohali Sub: For taking legal action against Jiwan Singh son of unknown, Caste Majbi Sikh, resident of Manuke Gill Tehsil Baghapurana District Moga, mobile No. 75268-00342, and against his sister who is living in Dubai (address not known) for selling my daughter in Oman instead of sending her in Dubai. Sir, it is submitted that above Jiwan Singh son of unknown is Son-in-law of my brother. My daughter namely Rajvir Kaur is aged about 25 years. Jiwan Singh had sent my daughter Rajvir Kaur to Dubai for work on tourist visa but later on I came to know that he has fraudulently sold my daughter after sending her in Oman. The sister of above Jiwan Singh whose name and address is not known is living in Dubai and above Jiwan Singh sends innocent girls to her and she further sells those girls in Oman. My daughter told me on the phone that she is forcibly made to do household work and she is not provided food and she cries in starvation and she is also subjected to mental harassment and torture. Jiwan Singh says that he will get return the girl to India if an amount of Rs. 9 lacs is given to him and his sister who is living in Dubai is also demanding an amount of 2700/- Riyan for the return of the girl to India. Thereafter when we talked with Jiwan Singh then he said that if any legal action is taken against him then he would harass and torture the girl even more vigorously. So there is

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threat to the life and liberty of my daughter and if some untoward incident happens to my daughter then Jiwan Singh and his sister will be fully responsible for that. It is therefore prayed that appropriate legal action be taken against above Jiwan Singh and his sister. I shall be highly thankful. Yours sincerely, Sd/ Dogar Singh son of Suchha Singh, resident of Chuggan Kalan, District Moga, 03.2023.//the. Mobile No. 86994-27494, dated 05.03.2023.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 02.11.2024. Learned counsel for the petitioner has submitted that investigation of the case is complete and challan already stands presented & the case in hand is one of magisterial trial. Learned counsel for the petitioner has further submitted that the petitioner has been falsely implicated into the FIR in question so as to pressurize the main accused, namely, Jiwan Singh to enter into an amicable settlement. Hence, regular bail is prayed for.

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.

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

6. The petitioner was arrested on 02.11.2024 whereinafter investigation was carried out & challan was presented on 29.12.2024. Total 14 prosecution witnesses have been cited and none has been examined till date. Therefore, it is indubitable that the culmination of the trial will take its own time. The rival contention of the learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question; the exact role of the petitioner into the alleged offence as also as to whether the petitioner has been implicated by the complainant so as to exert pressure upon the main accused, namely, Jiwan Singh to enter into an



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amicable settlement; 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 young girl aged about 24 years hence her 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 *para 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

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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 the custody certificate dated 14.01.2025 filed by the learned State counsel, the petitioner has suffered incarceration for more than 02 months and 10 days & 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 present case.

7. In view of totality of factual matrix of the present case, the instant 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.

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(vi) The petitioner 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/Illaq 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.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

15.01.2025
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No