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2025:PHHC:126498



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

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Date of decision: September 15, 2025

Kulwinder Kaur

....Appellant

Versus

State of Punjab and another

....Respondents

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

Mr. Jaypreet Singh, DAG Punjab.

Ms. Dheerja, Legal aid counsel
for respondent No.2/ complainant.

SUMEET GOEL, J. (ORAL)

Present appeal has been filed under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') for grant of regular bail to the appellant in case bearing FIR No.361 dated 17.09.2023, registered for the offences punishable under Sections 302, 34, 120-B of the Indian Penal Code, 1860 (for short 'IPC') and Section 3(2)(v) of the SC/ST Act, at Police Station Sohana, District Mohali.

2. The gravamen of the allegations against the appellant is that the complainant, namely, Surinder Singh (father of the deceased), had stated in his statement on 17.09.2023 at 03:02 hours, that on 12.09.2023, his son,

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namely Satvir Singh (deceased) had gone for his work being driver of a Taxi bearing No.PB-01D-3332, but did not return home back; accordingly, a missing report was lodged in PS, IT City, vide DDR No.28. Later on, a supplementary statement was also recorded. Further, one car was pulled out of the canal, and it was discovered that the deceased was having injuries on his head, throat and other parts of the body; one *kirpan* iron rod fitted with cycle *garai* and two wrecked mobile phones were also recovered from the said car raising suspicion against unknown persons. Later on, the appellant was named in the case.

3. Learned counsel for the appellant has iterated that the appellant is in custody since 17.09.2023. 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 not one of the eye witness account, but of circumstantial evidence. Learned counsel has argued that prosecution version primarily based upon the statements of Dharminder Singh and Ajaib Singh, who are stated to have witnessed the deceased being taken in the car in question on 12.09.2023, but they have not chosen to report to the police till 17.09.2023. Learned counsel has iterated that thus, the entire prosecution case accordingly, becomes doubtful. Learned counsel has argued that there are total 28 prosecution witnesses and only 03 have been examined till date. Learned counsel has argued that the appellant is a lady and has clean antecedents. Learned counsel has further argued that the appellant has suffered incarceration of more than 01½ years. Thus, regular bail is prayed for.

4. Learned State counsel has opposed the present appeal by arguing that the allegations raised against the appellant are serious in nature

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and thus the appellant does not deserve the concession of the regular bail.

Learned State counsel seeks to place on record the custody certificate dated 13.09.2025, in the Court today, which is taken on record.

5. Learned counsel for the complainant has vehemently opposed the grant of regular bail to the appellant by arguing that the allegations against the appellant are serious in nature. Learned counsel has further argued that in case, the appellant is released on bail, there is all the likelihood that the appellant may abscond from the process of justice as also intimate the remaining prosecution witnesses. Thus, dismissal of the regular bail to the appellant is entreated for.

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

7. The appellant was arrested on 17.09.2023 whereinafter investigation was carried out and challan was presented on 14.12.2023. Total 28 prosecution witnesses have been cited, but only 03 have been examined till date as per the admitted case of the rival parties. It is thus, indubitable that conclusion of the trial will take long time. The rival contentions raised at Bar give rise to debatable issues, which 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.

7.1. At this juncture, it would be apposite to refer herein a judgment of the Hon'ble Supreme Court in *Javed Gulam Nabi Shaikh vs. State of Maharashtra and anothers, 2024(3) RCR (Criminal) 494*, which reads thus:

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“18. *Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.*

19. *If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.*

20. *We may hasten to add that the appellant is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.*

21. *We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.”*

7.2. The appellant is a lady aged about 39 years (as per memo of parties appended with the appeal), hence, bail appeal 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*

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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.”*

7.3. As per custody certificate dated 13.09.2025 filed by learned State counsel, the appellant has already suffered incarceration for a period of 01 year, 11 months and 18 days, & is not shown to be involved in any other FIR(s).

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

8. 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.

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- (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.

9. 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.

10. Ordered accordingly.

11. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

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

(SUMEET GOEL)
JUDGE

September 15, 2025

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No