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2025:PHHC:112927



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: August 26, 2025

Rekha

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**Present:-** Mr. Nitin Bhanwala, Advocate for the petitioner.

Mr. Gurmeet Singh, 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 bearing FIR No.0440 dated 29.12.2022, registered for the offences punishable under Sections 302 & 34 of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station Safidon, Jind District.

2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:

“Statement of Ajane Roshan Lal son of Shri Syria Kom Chamar resident of village Bhuna police station Siwan district Kaithal age 45 years mobile number 9671715017 stated that I am a resident of the above address and do manual labour work, I am illiterate but know how to sign my name, I have two sons, the name of the elder son is Akshay and the name of the younger one is Vikas and two daughters, the name of the elder daughter is Jyoti and the name of the younger daughter is Gohni, my daughter Mohini was married in the year 2018 to Rakesh son of Vedpal Kom Chamar resident of village Siwana Mall according to Hindu customs but my daughter Mohini was sent to her in-laws in the year 2021. My daughter Jyoti above is also married to Rakesh's brother Satish, about 11 years ago

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my daughter Mohini was beaten up by her sister-in-law Rekha, Kamlesh, for washing clothes in her in-laws house, then Rakesh also beat her. My daughter Mohini informed me about this on phone. Then I took my daughter Mohini from Village Sivana Mall to my house on the same day. My daughter Mohini stayed at my house for about 12 months. On 16.12.22, my son-in-law Rakesh and his mother Kamlesh both came to our house with their daughter Mohini and on 27.12.22, both of them brought my daughter Mohini to village Sivana Mall. Today on 29.12.22, Rakesh's sister Rekha informed me on my mobile phone number 9671715047 from phone number 9306373755 that you come to our house in village Sivana Mall, but another man told me at the same time that your daughter Mohini is complete. On hearing this, I reached village Sivana Mall with my family members and saw in my daughter Mohini's house, my daughter was found dead on the bed in a room of the house, there are marks of injuries on the neck of the girl. My daughter Mohini was killed by her husband Rakesh, Sara Kamlesh and sister-in-law Rekha by hitting her. Legal action should be taken against these three.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 15.01.2023. Learned counsel has urged that the petitioner has been falsely implicated into the FIR in question. Learned counsel has further urged that, the prime/ main accused is one Rakesh, who is alleged to have murdered his wife and the present petitioner is sister of the said co-accused. Learned counsel has further submitted that the petitioner is a lady aged about 25 years with no criminal antecedents. 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 25.08.2025 in the 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 15.01.2023 whereinafter investigation was carried out and challan was presented in the case on 27.03.2023. Total 17 prosecution witnesses have been cited, and only 06 have

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been examined till date. It is, thus indubitable that conclusion of the trial will take its own time. The rival contention raised at Bar give rise to debatable issues, which shall essentially 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 petitioner absconding from the process of justice or interfering with the prosecution evidence.

6.1. The petitioner is a lady aged about 25 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

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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 25.08.2025 filed by learned State counsel, the petitioner has already suffered incarceration for a period of 02 years, 07 months and 10 days, & is not shown to be involved in any other FIR(s).

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 cellphone number to the Investigating Officer/SHO of concerned Police Station and

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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.

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

(SUMEET GOEL)
JUDGE

August 26, 2025
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No