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2025:PHHC:128258



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: September 16, 2025

Balraj Kaur @ Mahi Gill

...Petitioner

Versus

State of Punjab

...Respondent

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

Mr. Jaypreet Singh, DAG Punjab.

SUMEET GOEL, J. (ORAL)

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.0072 dated 19.03.2024, registered for the offences punishable under Sections 406, 420, 120-B of the Indian Penal Code, 1860 (for short 'IPC') and Section 24 of the Immigration Act, at Police Station Mataur, SAS Nagar.

2. The gravamen of the allegations against the petitioner is that the complainant, namely, Nasib Singh, alleged that he intended to send his daughter Navneet Kaur to Canada and, for this purpose, contacted *Visa Land Firm*. He paid an amount of ₹2,88,500/- to the said firm. However, despite the lapse of three years, neither was the visa issued nor was the amount returned. Even the cheques issued towards repayment—one dated 20.12.2023 for

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₹2,88,500/- and another dated 29.01.2024—were dishonoured upon presentation. Similarly, another complaint was filed by Jaspal Singh, who alleged that he had paid ₹3,35,000/- to the accused for securing a visa to Canada. Despite this payment, no visa was issued, nor was the amount refunded. A further complaint was lodged by Manjit Singh, who alleged that on 18.04.2022, he paid ₹15,000/- as file charges and thereafter, an additional sum of ₹5,80,000/- through cheque to the accused. However, neither was a visa arranged for him, nor was the money returned. On the basis of the above complaints, an inquiry was conducted. It was found that the petitioner had cheated the complainants of a total amount of ₹12,18,500/- under the pretext of sending them abroad. Consequently, an FIR was registered against the owners and associates of the firm, namely Nishan Singh, Harpreet Singh, Jaspreet Kaur, Mahi (petitioner herein), Preet, Aman, Priya, Harjot Kaur, and Simar Sandhu.

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 11.11.2024. Learned counsel has further argued that the petitioner has been falsely implicated into the FIR in question. Learned counsel has further iterated that, in fact, it is the co-accused, namely, Nishan Singh and the petitioner was only working in the firm owned by the said accused. Learned counsel has further submitted that the petitioner is a lady aged about 31 years. 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 14.09.2025 in Court, which is taken on record.

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

Before delving into the matter further, it would be germane to refer herein the case law governing the issue in hand:

“5.1 *Gudikanti Narasimhulu and others vs. Public Prosecutor, High Court of Andhra Pradesh AIR 1978 SUPREME COURT 429*, relevant whereof reads as under:

“10. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom- by refusal of bail is not for punitive purpose but for the bi-focal interests of justice-to the individual involved and society affected.

11. We must weigh the contrary factors to answer the test of reasonableness, subject to the need for securing the presence, of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be close to ours, the function of bail is limited, 'community roots' of the, applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on, the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a Policy favouring release justly sensible.

12. A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even, through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offence while on judicially sanctioned 'free enterprise,' should be provided against. No seeker of justice shall play confidence tricks on the court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our constitution.”

5.2. Further, the Hon’ble Supreme Court in a judgment titled as *Gurcharan Singh vs. State (UT of Delhi) 1978 (1) SCC 118*, has held as under:

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“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.”

5.3 Furthermore, the Hon’ble Supreme Court in a judgment titled as **Sanjay Chandra vs. CBI (2012) 1 SCC 40**, has held as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.”

6. The petitioner was arrested on 11.11.2024 whereinafter investigation was carried out and challan was presented in the case on 09.01.2025. Charges in the case in hand were framed on 15.02.2025. Total 17 prosecution witnesses have been cited, but only 01 has 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.

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6.1. The petitioner is a lady aged about 31 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."

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6.2. As per custody certificate dated 14.09.2025 filed by learned State counsel, the petitioner has already suffered incarceration for a period of about 10 months. As per the said custody certificate, the petitioner is stated to be involved in other FIR(s). Indubitably, the antecedents of a person are required to be accounted for while considering a regular bail petition preferred by him. However, this factum cannot be a ground sufficient by itself, to decline the concession of regular bail to the petitioner 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 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 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.

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- (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 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

September 16, 2025
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No