

2024:PHHC:067889



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CRM-M-16103-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227

CRM-M-16103-2024
Decided on: 13.05.2024.

Naina ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sandeep Kumar Bokolia, Advocate
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab,
Ms. Swati Batra, DAG, Punjab (Through VC).

ANOOP CHITKARA, J.

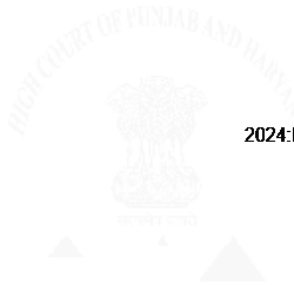
FIR No.	Dated	Police Station	Sections
135	20.07.2023	City South, Moga, District Moga	21, 22 read with 29of NDPS Act, 1985

1. A lady aged 24, in the fifth month of her pregnancy, incarcerated upon her arrest in the FIR captioned above, has come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.

2. In paragraph 18 of the bail petition, the petitioner declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1	149	26.08.2020	21/61/85 of NDPS Act	City South, Moga, Punjab
2	3	03.01.2024	21/61/85 of NDPS Act	City South, Moga, Punjab

3. Prosecution's case is being taken from the reply dated 22.04.2024, which reads as under: -



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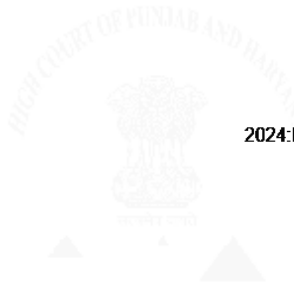
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“(4). That brief facts of the case are that on 20.07.2023 a police party headed by ASI Tarsem Singh of CIA Staff, Moga was present at Bahona Chowk, Moga in connection with patrolling and checking of suspected persons then special informer came there and informed that Kirandeep Kaur @ Kirna wife of Gurpreet Singh and Jasvir Kaur @ Jassi wife of Baljit Singh @ Mintu and Baljit Singh @ Mintu son of Kuldip Singh used to sell intoxicant tablets and heroin and in case raid is conducted then they can be apprehended red handed and from their possession huge quantity of heroin and intoxicant tablets can be recovered. On the basis of said information ASI Tarsem Singh sent ruqa to the police station and got registered the present case.

(5). That on receiving the information another police party headed by ASI Sukhwinder Singh reached at the spot and found that two ladies and one male person was already apprehended by the police party headed by ASI Tarsem Singh, as on seeing the police party headed by ASI Tarsem Singh said accused had thrown their respective plastic polyethene on the ground. ASI Sukhwinder Singh enquired about the names then first lady disclosed her name as Kirandeep Kaur wife of Gurpreet Singh R/o Sadhan Wali Basti, Moga and second lady disclosed her name as Jasvir Kaur @ Jassiwife of Baljit Singh @ Mintu. On enquiry the third accused disclosed his name as Baljit Singh @ Mintu. Police party tried to join public witness, but none joined. ASI Sukhwinder Singh directed said accused persons to pick their respective polyethene, which were thrown by them on the ground. Then accused Kirandeep Kaur picked one polythene and produced the same before ASI Sukhwinder Singh. During checking of polythene 5 strips, each containing 10 tablets, total 50 tablets of Etizolam tablets JP 0.5 mg ETIEXA-0.50 were recovered. Apart from this a small polythene containing 5 grams of heroin was also recovered from it. Two separate parcels i.e. one of 5 strips of tablets and another of heroin were prepared and same were sealed by ASI Sukhwinder Singh with his seal SS. Then accused Jasvir Kaur picked up the polythene, which was thrown by her and produced the same, during checking of it, 4 strips of Etizolam tablets JP 0.5 mg ETIEXA-0.50, each containing 10 tablets, total 40 tablets of were recovered. Parcel of recovered tablets was prepared and same was sealed by ASI Sukhwinder Singh with his seal SS. After that Baljit Singh @ Mintu produced the plastic polythene which was thrown by him on ground, during checking of same 4 strips each containing 10 tablets, total 40 tablets of Etizolam tablets JP 0.5 mg ETIEXA-0.50.Parcel of recovered tablets was prepared and same was sealed by ASI Sukhwinder Singh with his seal SS. Sample seal was prepared separately.

(6). That during investigation of the case, said Kirandeep Kaur @ Kirna wife of Gurpreet Singh and Jasvir Kaur @ Jassi wife of Baljit Singh @Mintu and Baljit Singh @ Mintu son of Kuldip Singh, got recorded their disclosure statement that they had purchased said 130 intoxicant tablets



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and 5 grams heroin from Karamjit Singh @ Sahil son of Kulvir Singh, Sona wife of Pawan Kumar, Kalu residents of Sadhan Wali, Jashandeep Singh @ Kali son of Raja Singh, Amarjit Singh resident of Chowk Shekhan, Moga as per instigation of Parkash Singh son of Harbhajan Singh resident of Shri Guru Chander Nagar, Moga. On the basis of said disclosure statement said Karamjit Singh @ Sahil son of Kulvir Singh, Sona wife of Pawan Kumar, Kalu residents of Sadhan Wali, Jashandeep Singh @ Kali son of Raja Singh, Amarjit Singh resident of Chowk Shekhan, Moga and Parkash Singh were nominated as accused in the present and offence u/s 29 of NDPS Act was added vide DDR No.31 dated 21.07.2023.”

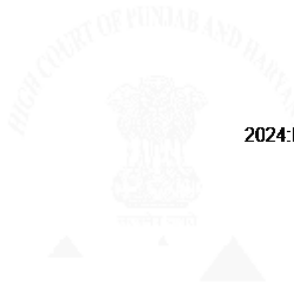
4. On merits, the petitioner seeks bail due to the lack of evidence connecting the petitioner with the intoxicants, which is based on a disclosure statement.

5. While opposing the bail, the State’s counsels contend that given the criminal past, the accused is likely to deal in drugs and indulge in the substance abuse, once released on bail. Counsel for the State also referred to para 17 of the reply, which reads as follows: -

“Petitioner has been nominated as accused in the present case on 17.11.2023 on the basis of disclosure statement of co-accused namely Sona wife of Pawan Kumar resident of Sadhan Wali Basti Moga”.

6. Counsel for the petitioner submits that the quantity involved in this case is allegedly commercial but the nomination of the petitioner is based on disclosure statement of the co-accused, so she is entitled for bail, in view of the law laid down in case of in Tofan Singh v. State of Tamil Nadu, 2020:INSC:620, the majority view of the larger bench of Hon’ble Supreme Court is that a confessional statement is not admissible in evidence. This view has been followed by Hon’ble Supreme Court in Cr.A 1273 of 2021, Sanjeev Chandra Agarwal v. Union of India, etc. Given the nature of evidence, the rigors of S. 37 of NDPS Act are not applicable to the petitioner.

7. Petitioner’s counsel, in the alternative seeks an interim bail on the grounds of wellbeing of the child in womb, the baby’s birth out of the jail, and her post-natal care. The petitioner’s counsel has also handed over medical records which are authenticated by Medical Officer, Modern Jail, Faridkot which corroborates that petitioner-Naina is pregnant as per report dated 18.01.2024 from 05 weeks, 06 days +-7 days. Counsel for the State does not dispute that female inmate is expecting.



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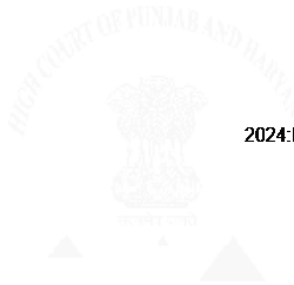
8. The petitioner contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner, the child in her womb, and their families. Petitioner's counsel gives no objection to the imposition of any stringent conditions and is also voluntarily agreeable to the condition that till the conclusion of the trial, the petitioner shall keep only one pre-paid mobile number, which is mentioned in AADHAR card, and within fifteen days of release from prison undertakes to disconnect all other pre-paid mobile numbers.

10. While the evidence against the petitioner is based on a disclosure statement, it's crucial to note that this court is not considering the bail on merits solely because the petitioner's counsel is confining the bail to the ground of her pregnancy and is seeking interim bail for her.

11. Here is a question that relates to the liberty of a pregnant woman, who is behind bars and as of date, the age of foetus is more than 05 months. The female accused's health condition, and rights of the future equal stakeholder of planet Earth, necessitates the alternative prayer for interim bail on medical grounds, which is a matter that requires contemplation and lengthy consideration as it is a matter of grave concern. Thus, the Court is not adjudicating the petitioner's case on merits by analyzing the quality of evidence in the shape of disclosure statements but on child welfare grounds alone, reserving liberty to seek bail on merits after the termination of interim bail.

12. However, the petitioner has criminal antecedents. Epistemology guides us to follow the path trodden by the wise, where the tenet of jurisprudence is that crime is to be despised and not the criminal. Nonetheless, for a recidivist, the contours of a playing field are marshy, and the graver the criminal history, the slushier the puddles. Granting bail to recidivists throws an onerous responsibility upon the courts to act judiciously and reasonably because arbitrariness is the antithesis of law.

13. The petitioner is a young lady of 24 years and appears to be in the company of hoodlums. The question more important than the petitioner being a recidivist is that she is pregnant. In this peculiar condition, the court, for interim bail, is not considering the petitioner's criminal past as a factor to deny her bail, but once this interim bail is over, and when the petitioner's bail is considered on merits, if filed, at that stage the State's counsel may draw the Court's attention towards the petitioner's criminal history as a factor to consider denying her bail on merits.



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14. The jurisprudence and the judicial precedents in India relating to the grant of bail to pregnant women and lactating mothers are as follows:

15. The proviso to S. 437 of CrPC, creates a special right of bail in favour of a person who is under the age of sixteen years or is a woman or is sick or infirm. S. 437 CrPC reads as follows:

437. When bail may be taken in case of non- bailable offence.

(1) When any person accused of, or suspected of, the commission of any non- bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non- bailable and cognizable offence:

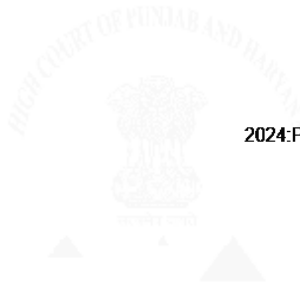
Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm: Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason.

16. In *Kamana Naykar v. State of UP*, 2023 SCC Online SC 942, Hon'ble Supreme Court of India granted bail to a pregnant woman by holding as follows,

[2]. The appellant (accused) - Kamana Naykar @ Kamana Singh prays for grant of bail in connection with Case Crime/First Information Report (FIR) No. 30/2023 dated 24.01.2023 registered with Police Station - Nawabad, District - Jhansi, Uttar Pradesh for the offence(s) punishable under Sections 306 and 342 respectively, of the Penal Code, 1860 (IPC).

[3]. The deceased - Shyam Sundar, who is said to have committed suicide happened to be the husband of the appellant (accused) - Kamana Naykar @ Kamana Singh. It is the case of the prosecution that the appellant (accused) - Kamana Naykar @ Kamana Singh abetted the commission of suicide by the deceased - Shyam Sundar. We take notice of the fact that this Court vide order dated 30.06.2023, ordered release of the appellant (accused) - Kamana Naykar @ Kamana Singh on interim bail, as she is pregnant.

[4]. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that the



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appellant (accused) - Kamana Naykar @ Kamana Singh has been able to make out a case for release on bail. The appellant (accused) - Kamana Naykar @ Kamana Singh is accordingly ordered to be released on bail, subject to the terms and conditions which the trial Court may deem fit to impose.

17. In *State of Gujarat v. Jadav*, CrA No. 652 of 2008, decided on 01.02.2016, a Division Bench of Gujarat High Court, while reversing acquittal and convicting the accused, imposed the sentence on the convicts for seven years imprisonment for dowry death, simultaneously suspended sentence of a pregnant convict for around ten months.

18. In *Safoora Zargar v. State*, In BAIL Appln. No. 1318-2020, Delhi High Court had granted bail to a pregnant woman on strict bail conditions.

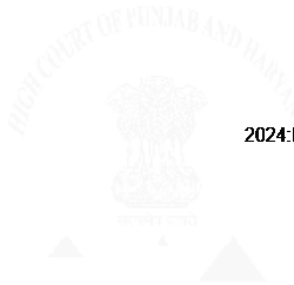
19. In *Tin Sei Minthang Touthang v. Officer-in-Charge, Moirang Police Station, Manipur*, 2021 CriLJ 19, Manipur High Court granted bail to a pregnant woman carrying seven months pregnancy, despite accusations of involvement in a huge quantity of opium but had no bad antecedents.

20. In *Rekha v. State of Karnataka*, Cr.Pet No. 200107 of 2021, decided on 29.01.2021, accused in a case for the culpable homicide of five persons, the Karnataka High Court granted bail to a woman because there were no allegations against her of overt acts, and also because she was pregnant.

21. In *Monika v. State of H.P.*, 2021:HHC:6175, Himachal Pradesh High Court had granted bail to a pregnant woman in a case involving commercial quantity under NDPS Act.

22. In *Kajal v. State (NCT of Delhi)*, Bail Appln. 2286 of 2022, decided on 18.08.2022, Delhi High Court observed,

[5]. The Court is required to give due weightage to the aspects like nature and gravity of offence and the impact of such an offence committed, on the society for consideration of bail. However, pregnancy of a woman is a special circumstance which needs to be appreciated, as giving birth to a child while in custody, would not only be a trauma to the mother but also create an everlasting adverse impact on the child, whenever questioned about his birth. Every pregnant female deserves the dignity enshrined under Article 21 of the Constitution of India during motherhood. The Court is expected to take note of interest of a child, who is not expected to be exposed to the prisons, until and unless there is a grave danger in releasing the petitioner on bail. Even the proviso to Section 437(1) Cr.P.C.



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also provides that the condition of not releasing a person on bail charged with an offence punishable with death or imprisonment for life shall not be applicable, if such person is under the age of sixteen years or is a woman or sick or infirm subject to such conditions as may be imposed.

23. In *Simran v. State of Punjab*, CRM-M-56339-2022, decided on 12.10.2023, a pregnant woman had sought interim bail during the period of her pregnancy, which was granted by this Court.

24. In *Amanjot Kaur v. State of Punjab*, 2023-PHHC-157283, Punjab & Haryana High Court, while granting interim bail to a pregnant woman, observed as follows,

[5]. Although petitioner is alleged to have been found in possession of the contraband falling in commercial category but pregnancy of a woman is a special circumstance, in which the gravity of the offence for the time being is liable to be ignored. Giving birth to a child while in custody is not only traumatic to the mother but also to the child to be born because psyche of a child will always have an adverse impact, as and when said child is questioned about his birth. Besides, dignity is liable to be ensured to a pregnant woman, in view of fundamental right enshrined under Article 21 of the Constitution of India guaranteeing life and liberty. The interest of the child is also to be taken into consideration, who is not expected to be exposed to the prisons, unless and until it is found that there is grave danger in releasing the petitioner on bail. No doubt that Section 37 of the NDPS Act creates fetter on grant of bail in such like cases involving possession of contraband of commercial category but at the same time when bail is considered on humanitarian grounds, said Section 37 of the NDPS Act cannot be considered to act as a blanket ban on the power of the Court to grant interim bail.

[6]. Having regard to the aforesaid facts and circumstances, and without commenting anything further on the merits of the case, when proper delivery of the petitioner is required under medical care, this petition is allowed. Petitioner be granted interim bail for a period of 06 months from the date of her actual release, on her furnishing bail bonds/surety bonds to the satisfaction of the Learned Trial Court/Duty Magistrate concerned, on usual terms and conditions.

25. In *Varsha v. State of Haryana*, 2024-PHHC-016816, Punjab & Haryana High Court had granted bail to a woman who was carrying eighth month pregnancy, with following observations,

[5]. Perusal of report fortifies that the petitioner is gravid with expected date of delivery being 13.03.2024 with no abnormality. Necessity of granting interim bail to pregnant women is a matter of humane treatment in view of their unique circumstances as pregnancy can come with various health risks and complications. Detention facilities might not be equipped to provide the necessary medical care and attention that pregnant women require and thus, grant of interim bail allows them to access proper medical facilities and prenatal care, which is crucial for



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their well-being and the well-being of their unborn child. Further, being detained while pregnant may lead to heightened stress levels, which can negatively impact both the mother and the unborn child and at this stage well-being of the unborn child is a paramount concern.

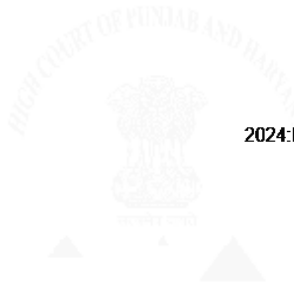
[6]. Considering the aforesaid, the present petition is disposed of and the petitioner is ordered to be released on interim bail, subject to her furnishing adequate bail bonds and surety bonds to the satisfaction of the concerned Trial Court/Duty Magistrate for a period of three (03) months from 20.02.2024.

26. In *Joginder Kumar versus State of U.P.*, 1994 4 SCC 260, a three-Judge bench of Supreme Court holds,

[9]. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first - the criminal or society, the law violator or the law abider; of meeting the challenge which Mr. Justice Cardozo so forthrightly met when he wrestled with a similar task of balancing individual rights against society's rights and wisely held that the exclusion rule was bad law, that society came first, and that the criminal should not go free because the constable blundered.

27. In *R.D. Upadhyay vs State of A.P.*, Writ Petition (civil) 559 of 1994, decided on 13-Apr-2006, a three-member bench of Supreme Court holds,

The Union of India noted that the "National Expert Committee on Women Prisoners", headed by Justice V.R. Krishnaiyer, framed a draft Model Prison Manual. Chapter XXIII of this manual makes special provision for children of women prisoners. This manual was circulated to the States and Union Territories for incorporation into the existing jail manuals. It is significant to note that this committee has made important suggestions regarding the rights of women prisoners who are pregnant, as also regarding child birth in prison. It has also made suggestions regarding the age up to which children of women prisoners can reside in prison, their welfare through a crèche and nursery, provision of adequate clothes suiting the climatic conditions, regular medical examination, education and recreation, nutrition for children and pregnant and nursing mothers. Various provisions of the Constitution and statutes have been noticed earlier which cast an obligation on the State to look after the welfare of children and provide for social, educational and cultural development of the child with its dignity intact and protected from any kind of exploitation. Children are to be given opportunities and facilities to develop in a healthy manner and in a condition of freedom and dignity. We have also noted U.N. conventions to which India is a signatory on the Rights of the Child. This Court has, in several cases, accepted International Conventions as enforceable when these Conventions elucidate and effectuate the fundamental rights under the



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Constitution. They have also been read as part of domestic law, as long as there is no inconsistency between the Convention and domestic law (See *Vishaka v. State of Rajasthan* [(1997) 6 SCC 241]). In *Sheela Barse v. Secretary, Children's Aid Society* [(1987) 3 SCC 50] which dealt with the working of an Observation Home that was maintained and managed by the Children's Aid Society, Bombay, it was said:

"5. Children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. In recent years, this position has been well realised. In 1959, the Declaration of all the rights of the child was adopted by the General Assembly of the United Nations and in Article 24 of the International Covenant on Civil and Political Rights, 1966. The importance of the child has been appropriately recognised. India as a party to these International Charters having ratified the Declaration, it is an obligation of the Government of India as also the State machinery to implement the same in the proper way. The Children's Act, 1948 has made elaborate provisions to cover this and if these provisions are properly translated into action and the authorities created under the Act become cognizant of their role, duties and obligation in the performance of the statutory mechanism created under the Act and they are properly motivated to meet the situations that arise in handling the problems, the situation would certainly be very much eased."

28. Article 51(c) of the Constitution of India is the North Star for international coordination to make laws similar throughout the globe. It urges the state 'to foster respect for international law. It provides that,

(51). Promotion of international peace and security. —State shall endeavour to—

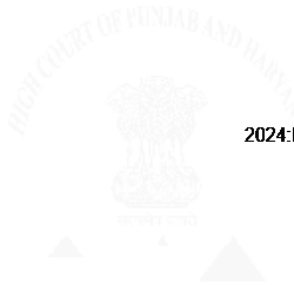
(c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another.

29. Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women New York¹, reads as follows,

[1]. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

[2]. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services

¹ U.N. GA, (Oct 18, 1979), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.



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where necessary, as well as adequate nutrition during pregnancy and lactation.

30. According to the report of Ministry of Women and Child Development Government of India, on Women in Prisons, launched by the Ministry of Women and Child Development, “As per most recent data available from the end of 2015, there are 4,19,623 persons in jail in India, of which, 17,834 (about 4.3%) are women. Of these, 11,916 (66.8%) are undertrial prisoners. In India, an analysis of prison statistics at five-year intervals reveals an increasing trend in the number of women prisoners – from 3.3% of all prisoners in 2000 to 4.3% in 2015. A majority of female inmates are in the age group of 30-50 years (50.5%), followed by 18-30 years (31.3%). Of the total 1,401 prisons in India, only 18 are exclusive for women, housing 2,985 female prisoners. Thus, a majority of women inmates are housed in women’s enclosures of general prisons.”² The number of women prisoners minuscule their male counterparts, establishing that women are inherently not predisposed to criminality.

31. The Committee of Ministers to member States of European Union, resolved as follows,

“In order to ensure the right of a child to the highest attainable standard of health, appropriate pre-natal and post-natal health care, support and information shall be provided for imprisoned mothers. Pregnant women shall be allowed to give birth in a hospital outside prison. Instruments of restraint shall never be used on women during labour, during birth and immediately after birth. Arrangements and facilities for pre-natal and post-natal care in prison shall respect, as far as practicable, cultural diversity.”³

32. People, Organizations, and Governments keep on assessing whether a pregnant woman and a lactating mother deserve bail or not from their perspective. Some of these groups oppose bail and advocate for better facilities in jail for pregnant and postpartum women than bail. A few studies also oppose such bail for the betterment of the child and her mother. Outcomes of pregnancy in prison are better overall than for similarly disadvantaged women in the community⁴. Model Prison Manual for the

² Report on ‘Women in Prisons’ launched by the Ministry of Women and Child Development. Press Information Bureau Government of India Ministry of Women and Child Development (Jun 25, 2018). <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1536513>.

³ Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents (adopted by the Committee of Ministers on 4 April 2018, at the 1312th meeting of the Ministers’ Deputies), © Council of Europe, December 2018, Printed at the Council of Europe, Para 34. https://childrenofprisoners.eu/wp-content/uploads/2019/12/CoE_Rec20185.pdf

⁴ Susan Hatters Friedman, Aimee Kaempf, Sarah Kauffman, *The Realities of Pregnancy and Mothering While Incarcerated*, Journal of the American Academy of Psychiatry and the Law Online May 2020, JAAPL.003924-



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Superintendence and Management of Prisons in India⁵, prescribes special care and attention to pregnant prisoners.

33. Meeting the health care needs of pregnant incarcerated women, however, can be difficult in a system originally designed for males⁶. Although there is a dearth of research data on these women, we do know that, when compared to women in the general population, pregnant prisoners are more likely to have risk factors associated with poor perinatal outcomes, including preterm and small-for-gestational-age infants— These outcomes are likely a result of exposure to a combination of risk factors, including lack of access to or failure to attend prenatal care, substance use, toxic stress, domestic violence, poor nutrition, and sexually transmitted infections.⁷ Thus, pregnancies among women in prison, in addition to being complicated by the aforementioned risk factors, are more likely to be complicated by mental illness, substance-use disorders, and personality disorders.⁸

34. According to CDC (Centers for Disease Control and Prevention, USA), “Violence can lead to injury and death among women in any stage of life, including during pregnancy”.⁹ Bleeding and clotting disorders can cause serious problems during pregnancy, including miscarriage.¹⁰ Francesca Halstead, stated in ‘Pregnancy and childbirth in prison’, “Nonetheless, the difference between pregnant prisoners and the general prison population (and pregnant women in mainstream society) was the wish for some to conceal their pregnancies. The wish to blend in to avoid being singled out for attention or, worse, threats of violence, intensified their stress. The intensity of masking concerned women about the effect of stress on their unborn baby”.¹¹ A pregnant person in custody does not have the freedom to call their health care provider

20; DOI: <https://doi.org/10.29158/JAAPL.003924-20;>
<https://jaapl.org/content/early/2020/05/13/JAAPL.003924-20>

⁵ Prepared by Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, New Delhi, 2003.

https://www.mha.gov.in/sites/default/files/2022-12/ModelPrisonMan2003_14112022%5B1%5D.pdf

⁶ Susan Hatters Friedman, MD, Aimee Kaempf, MD, and Sarah Kauffman, MD, *The Realities of Pregnancy and Mothering While Incarcerated*, J Am Acad Psychiatry Law 48(3) online, 2020. DOI:10.29158/JAAPL.003924-20 <https://jaapl.org/content/early/2020/05/13/JAAPL.003924-20>

⁷ Danielle Dallaire and Rebecca Schlafer, *Shackling Pregnant Women Poses Risks to Mother and Fetus, based on a research in US prisons*, <https://psychologybenefits.org/2015/12/29/shackling-pregnant-women-poses-risks-to-mother-and-fetus/> [2015].

⁸ Susan Hatters Friedman, MD, Aimee Kaempf, MD, and Sarah Kauffman, MD, *The Realities of Pregnancy and Mothering While Incarcerated*, J Am Acad Psychiatry Law 48(3) online, 2020. DOI:10.29158/JAAPL.003924-20 <https://jaapl.org/content/early/2020/05/13/JAAPL.003924-20>.

⁹ <https://www.cdc.gov/ViolencePrevention/index.html>

¹⁰ <https://www.cdc.gov/ncbddd/blooddisorders/index.html>

¹¹ <https://www.sociologylens.net/topics/gender/pregnancy-and-childbirth-in-prison/27982> [2020].



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or an ambulance or to go to a hospital, but must instead notify a custody officer who serves, functionally, as the gatekeeper to a pregnant person accessing medical personnel.¹²

35. Despite the efforts made in international maternity guidelines to address the issues of care for pregnant women, there are currently deficiencies in many health aspects of pregnant prisoners and the special needs, such as prenatal care and assessment fetal health, MHC, ethical issues, problems related to the prison environment and forced labor, communication with the environment and people inside and outside the prison.¹³ Pregnant women rarely receive adequate ante- and post-natal care in prison.¹⁴ As per Mayo Clinic, even if you eat a healthy diet, you can miss out on key nutrients. Taking a daily prenatal vitamin ideally starting at least three months before conception can help fill any gaps.¹⁵ Apart from these, pregnant women need nutrient level of food and access to basic nutrition and health services, and need sanitation and hygiene education, including menstrual hygiene.¹⁶ Pregnant prisoners should be provided with the same level of health care as that provided to women outside prison, including access to obstetricians, gynaecologists, midwives and birthing practitioners appropriate to their culture.¹⁷

36. A growing body of research shows that prenatal stress can have significant effects on pregnancy, maternal health and human development across the lifespan. These effects may occur directly through the influence of prenatal stress-related physiological changes on the developing fetus, or indirectly through the effects of prenatal stress on maternal health and pregnancy outcome which, in turn, affect infant

¹² Lauren Kuhlik and Carolyn Sufrin, *Pregnancy, Systematic Disregard and Degradation, and Carceral Institutions*, Harvard Law & Policy Review, Vol. 14, 417(2020). <https://harvardlpr.com/wp-content/uploads/sites/20/2020/11/Kuhlik-Sufrin.pdf>

¹³ Somayeh Alirezaei and Robab LatifnejadRoudsari, *Promoting Health Care for Pregnant Women in Prison: A Review of International Guidelines*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7055189/> Iranian Journal of Nursing and Midwifery Research, (2020).

¹⁴ The Bangkok Rules, *The Handbook on Women and Imprisonment*, referring to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, *Pregnant women and women with children in prison*, Pregnancy and childbirth United Nations, Para 6.2, 2nd edition, New York, (2014), https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

¹⁵ <https://www.mayoclinic.org/healthy-lifestyle/pregnancy-week-by-week/in-depth/pregnancy-nutrition/art-20045082>

¹⁶ <https://data.unicef.org/topic/maternal-health/antenatal-care/>

¹⁷ WHO's Kyiv Declaration on Women's Health in Prison, *Correcting gender inequity in prison health Of-fender Health, 2009*, WHO Regional Office for Europe, (2007). https://www.unodc.org/documents/hiv-aids/WHO_EURO_UNODC_2009_Womens_health_in_prison_correcting_gender_inequity-EN.pdf

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health and development¹⁸. PTSD is a serious mental health condition among prisoners' offspring, particularly when mothers are incarcerated.¹⁹ More than one-third of our sample of women who were incarcerated and gave birth in custody met criteria for moderate to severe depression on the PHQ-9 during pregnancy or the postpartum period.^{20*} Prenatal stress can indirectly affect infant development and health by increasing the occurrence of adverse pregnancy outcomes which are themselves predictive of substantial and ongoing challenges for affected offspring.²¹

37. Pregnant women lack control over their environment in prison, which can have a negative effect on sleeping times, naps, dietary requirements, and medication administration.²²

38. In the first weeks after childbirth, mother and infant navigate a complex transition from the physiology of pregnancy to the early postpartum period.²³ WHO and UNICEF recommend that children initiate breastfeeding within the first hour of birth and be exclusively breastfed for the first six months of life — meaning no other foods or liquids are provided, including water.²⁴ This is not a matter of personal choice but a critical factor in a child's health and immunity, as a mother's milk referred as 'Liquid Gold' is the best for a child, and also, aids in preventing various diseases and building

¹⁸ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5052760/>

¹⁹ Giacomo Gualtieri, Fabio Ferretti, Alessandra Masti, Andrea Pozza, and Anna Coluccia, *Post-traumatic Stress Disorder in Prisoners' Offspring: A Systematic Review and Meta-analysis*, *Clin Pract Epidemiol Ment Health*. 2020, 16: 36–45. Published online 2020 Apr 1. doi: 10.2174/1745017902016010036; PMCID: PMC7254824; PMID: 32508968

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7254824/>

²⁰ Mariann A Howland, Bethany Kotlar, Laurel Davis, Rebecca J Shlafer, *Depressive Symptoms among Pregnant and Postpartum Women in Prison*, *J Midwifery Womens Health*, 2021 Jul;66(4):494-502. doi: 10.1111/jmwh.13239. Epub 2021 Jul 14 <https://pubmed.ncbi.nlm.nih.gov/34260138/>

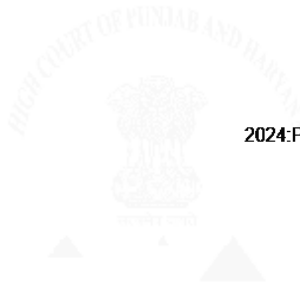
* To evaluate Depressive Symptoms among Pregnant and Postpartum Women in Prison, the researchers assessed depressive symptoms longitudinally from pregnancy into the postpartum period in a sample of 58 women who gave birth in prison. They also considered whether incarceration-related factors (length of time incarcerated while pregnant, remaining length of sentence to serve after birth) were associated with depressive symptoms.

²¹ Mary E Coussons-Read, PhD, *Effects of prenatal stress on pregnancy and human development: mechanisms and pathways*, *Obstet Med*. 2013 Jun; 6(2): 52–57. Published online 2013 May 3. doi: 10.1177/1753495X12473751; PMCID: PMC5052760; PMID: 27757157

²² Susan Hatters Friedman, MD, Aimee Kaempf, MD, and Sarah Kauffman, MD, *J Am Acad Psychiatry Law* 48(3) online, 2020. DOI:10.29158/JAAPL.003924-20 <https://jaapl.org/content/early/2020/05/13/JAAPL.003924-20>

²³ Alison M. Stuebe, MD, MSc, Karen Grewen, PhD, and Samantha Meltzer-Brody, MD, MPH, *Association Between Maternal Mood and Oxytocin Response to Breastfeeding*, *J Womens Health (Larchmt)*. 2013 Apr; 22(4): 352–361. doi: 10.1089/jwh.2012.3768; PMCID: PMC3627433; PMID: 23586800. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3627433/>

²⁴ https://www.who.int/health-topics/breastfeeding#tab=tab_2



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immunity. Mothers should have the freedom to continue to breastfeed for as long as they choose.²⁵

39. Questions are being raised once again over why pregnant women are incarcerated in the first place.²⁶ It is not necessary to incarcerate pregnant women- Doing so is a choice made by a country's criminal justice system.²⁷ Pregnant women and women with dependent children should not be imprisoned unless absolutely necessary.²⁸

40. As far as possible, except in the case of high-risk prisoners, arrangements for temporary release are to be made to enable delivery of children in a hospital outside the prison- Suspension of sentence may also be considered in the case of casual offenders.²⁹ Imprisonment of pregnant women and mothers with young children should be the last resort, and they should be provided with holistic, individually tailored support, most preferably in community settings, to address their multiple intersecting needs³⁰. We believe that, as a general rule, pregnant women should not be imprisoned- Sentences can be deferred, terms of imprisonment can be suspended, community orders can be imposed, community support can be provided.³¹ The period of deferral should be extended from 6 months to 18 months, which would give a pregnant defendant time to safely deliver her baby in the community and also undertake necessary changes to avoid further offending.³²

²⁵ Leah Selim, *Breastfeeding from the first hour of birth: What works and what hurts*, <https://www.unicef.org/stories/breastfeeding-first-hour-birth-what-works-and-what-hurts>

²⁶ Feyzi Ismail, *No Births Behind Bars: The scandal of imprisoning pregnant women*, <https://www.counterfire.org/article/no-births-behind-bars-the-scandal-of-imprisoning-pregnant-women/>

²⁷ Epstein, R., Brown, G., Garcia De Frutos, M., *Why are Pregnant Women in Prison*, Coventry, Coventry University, (2021). <https://www.coventry.ac.uk/research/research-directories/current-projects/2020/why-are-pregnant-women-in-prison/>

²⁸ Pregnant women and women with children in Prison, https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

²⁹ Kiran R. Naik, *Women in Prisons India*, International Journal of Research and Analytical Reviews, [IJRAR] (2019), Vol. 6, Issue 2, <http://www.ijrar.org/papers/IJRAR1AXP008.pdf>

³⁰ Diksha Sapkota, Susan Dennison, Jyai Allen, Jenny Gamble, Corrie Williams, Nomxolisi Malope-Rwodzi, Laura Baar, Janet Ransley, Tara Renae McGee, *Navigating pregnancy and early motherhood in prison: a thematic analysis of mothers' experiences*, Health Justice, Oct 29, 2022;10(1):32. doi: 10.1186/s40352-022-00196-4. <https://pubmed.ncbi.nlm.nih.gov/36308566/>

³¹ Epstein, R., Brown, G., Garcia De Frutos, M., *Why are Pregnant Women in Prison*, Coventry, Coventry University, (2021). <https://www.coventry.ac.uk/research/research-directories/current-projects/2020/why-are-pregnant-women-in-prison/>

³² Epstein, R., Brown, G., Garcia De Frutos, M., *Why are Pregnant Women in Prison*, Coventry, Coventry University, (2021).



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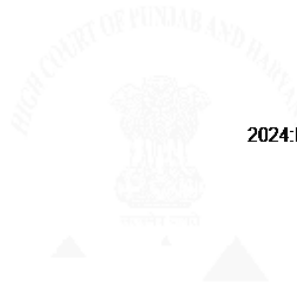
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41. In the absence of substantial studies and widespread data, the question as to whether denying bail to pregnant women and lactating mothers could violate the basic Human Rights of newborns, remains a matter of debate. However, studies do point out towards the potential far reaching, detrimental effects of denying bail to such women, creating pre-dispositions to negative health outcomes, in both, the mother and the developing child. Does no option but to deliver a child in custody cast trauma and stigma on both the living entities, for life? Thus, the ripple effect of this seemingly simple issue is manifold, having cross-disciplinary, multifaceted, vast implications on the areas of public health, human development, and the growth of human rights and values in globalized societies.

42. Restrains and confined spaces may cause immense mental stress to expecting mothers. Problems of overcrowding, unhygienic, unsatisfactory living conditions; hostile interactions and surroundings exacerbated with lack of emotional support from family members during the pregnancy period may directly cause negative impacts on the health and well-being of pregnant women in jail, further resulting in creation of non-ideal, negative conditions, which might be unsuitable for the growth and development of the foetus and the newborn.

43. It is tough to fulfil all necessary and unavoidable, essential needs of the child on jail premises, which include the appropriate temperature of the room, a hygienic and peaceful environment, adequately nutritious food for the child, skilled assistance for the child's health care, adequate clothing, non-threatening, safe and comfortable environment for the child and the mother, etc. Even if one does not delve into the matter of availability of the extent of nutrient rich food in such premises for such a special circumstances, on a daily basis, one can agree with the premise that although, decent and nutritious food in prisons may cater to the up-keeping of physical health to a certain extent but the overall mental health of any person would take a hit, in such conditions.

44. It is difficult to be convinced that our prisons can take the requisite care of pregnant women and lactating mothers. In the absence of a convincingly adequate system in place, the judicial compassionate approach would be to safeguard the <https://www.coventry.ac.uk/research/research-directories/current-projects/2020/why-are-pregnant-women-in-prison/>



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fundamental human rights of a pregnant person and a lactating mother as well as the child.

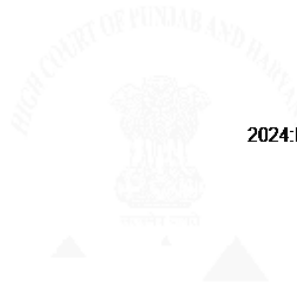
45. The word mother stands for 'life' and is used to describe all life-giving forces- be it 'mother nature' or 'mother land'. In many religions, civilizations, and cultures across different faiths, the mother is regarded as "creator of the world". In many societies and cultures giving birth is considered 'sacred'; the whole process of pregnancy is referred to as a "spiritual journey"; and the birth of a child is considered extremely auspicious, equating children with the 'blessings of the divine power', further welcoming the child itself as an incarnation/form of a God. Thus, the potency of the word 'mother' and what it represents is unparalleled, commanding highest form of respect and reverence, in every religion, in every society, in every era, across all borders, and even across the species.

46. The pregnancy of a woman is a particular circumstance that needs to be appreciated. Giving birth to a child in custody may have detrimental ramifications on both, the physical and mental health, of the mother and the child, as prisons are not primarily designed keeping pregnant women or women with small children in mind.

47. Every woman going to be a mother deserves care, consideration, dignity, and respect in society. Every expecting female deserves paramount care and consideration during motherhood. The beginning of a new life deserves its fair share of celebrations, support, care and dignity. This court, by now, consciously aware of the multi-faceted needs and requirements of a pregnant person cannot simply brush them aside and look the other way.

48. The period of incarceration of the mother would someday be over but the stigma that would follow the child whenever questioned about their birth and the place of upbringing, would forever remain, inevitably altering child's outlook towards life, adversely impacting the way society will perceive such a child and the way the child will see the outer world, beyond the four walls of a prison. It will be traumatic if the mother is later absolved of the accusations or acquitted of the charges.

49. The child cannot be made to suffer for the wrongs allegedly committed by her mother. When one looks back, in hindsight, through the mirror of life, the memories reflected back should not be horrific tales of gruesome circumstances, as the shards of such memories may be sharp enough to pierce through the core of a person. An



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expecting mother might eventually find herself acquitted, but the grief and trauma of being born in jail will always remain confined within the prison of a child's mind.

50. 'To grant' or 'Not to grant' bail to an expecting mother languishing in jail during the period of pregnancy needs to be considered with empathy and compassion. Cradles of motherhood and nurseries of civilization are in meadows and not in cages.

51. One needs to consider- How big a difference would it make to the State and to the society, if incarceration of a pregnant woman is postponed? Would it be bigger than ensuring the overall safety and wellbeing of a helpless, guiltless child, growing in the cocoon of its mother's womb? Is it not imperative for the system to ensure the overall wellbeing of a child and secure to our children and our mothers' basic human dignity? What is so compelling urgency for pre-trial custody? Heavens will not fall, and societies will not change overnight, if incarceration is postponed! There should be no restraints during complicated and sensitive period of pregnancy, no restraints during labor and delivery, and no restraints for a year, at least, after giving birth.

52. Criminal jurisprudence has already ventured into the realm of reformatory justice. The trends emerging from the temples of justice must, therefore, resonate with the ethos of compassion, progression, and humanity. The litmus test is our approach and stand towards the person who needs the most care and is carrying the genes and the generation forward.

53. The grant of bail to an expecting mother might factor in to encourage and motivate her to look forward and work towards ensuring a brighter future for her child, vowing to nurture the child so that they always stay away from the insurmountable slippery walls of a bottomless cage, that one is pushed in, when one enters the world of crime. It is time to take a contrarian call to the maxim *Partus sequitur ventrem*.

54. As a progressive society with a liberal and dynamic Constitution, automatically imprisoning a newborn will eventually reflect grave injustice. We recognise the criticality and gravity of such an issue, knowingly with an affirmative action prevent potential threats to the character of our people and to endeavour for our civilization to be on the right side of the history.

55. Pregnant women and lactating mothers need bail, not jail. Courts must restore women's due and sacrosanct freedom in motherhood *pro tanto*. Even when the



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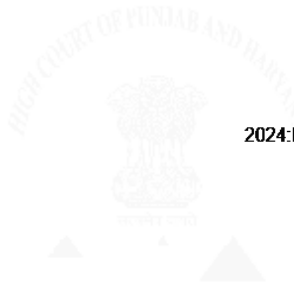
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offenses are highly grave and accusations very severe, they still deserve temporary bail or suspension of the sentence, extending to a year after delivery. Further, those who stand convicted and their appeals closed also deserve similar relief, in whatever camouflage it may come.

56. Giving birth to a child in jail and a child taking birth in jail could be such a blot in one's life story that social detestation and hatred might follow, potentially creating an everlasting detrimental impact on the mind of the child, whenever questioned about birth. Human rights in the administration of justice are to ensure that a child should not be burdened and prejudiced, inheriting the legal status of their mother in jail.

57. After legally analyzing the facts and probable consequences, this court is of the considered opinion that in the more significant interests of Equity and Justice, which stand on the bedrock of compassion, the court is inclined to grant interim bail to the petitioner with concern and wish that she gives birth to a healthy child that is nurtured well and petitioner reforms to create an environment at home to ensure that her baby does not become a victim of substance abuse. According to UNICEF and the World Health Organization, breastfeeding is recommended for around two years, it is also established that after six months of birth, a child starts taking a supplementary feed in addition to breastfeeding, and after one year, the child can be fully substituted on other meals. After carefully assessing all pros and cons, this Court is inclined to grant interim bail from 11.06.2024 for the duration of the pregnancy and up to one year postpartum.

58. On one side, the dignity of a pregnant woman and the right of an innocent infant requires to be secured, but on the other hand, the judicial system is duty-bound to serve justice to the aggrieved person, and the State is also duty bound to maintain the peace and harmony in the society. It is necessary to take into consideration the drawbacks of granting bail to a pregnant woman, to take into consideration the chances of absconding by a pregnant woman; the heinousness of the crime for which she is under custody; and the effect of her bail on society, specifically whether the pregnant woman to be released on bail can cause any loss, damage, and harm to the complainant or the society at large. It is also necessary that a woman may not take the shelter of being pregnant as an excuse for remaining out of jail custody, as every other woman may prefer to get pregnant to remain out of jail. It should not become a story of the woman who was sentenced to life imprisonment for corruption and was able to evade a prison



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sentence for over a decade by getting pregnant thirteen times before finally being sent to jail by a Court.

59. It is clarified that in case of the unfortunate incident of any Intra Uterus Death (IUD), or if the baby expires, the petitioner is to surrender in the concerned jail within 30 days from the date of such a tragedy. Within a week of the delivery or any untoward incident, the petitioner shall hand over such documents to the concerned trial court and the Investigator. The maximum duration of this interim bail is for one year after she delivers the baby. After surrendering, the petitioner shall be allowed to file a fresh bail petition seeking regular bail on merits.

60. This interim bail shall be strictly subject to the condition that if, during interim bail, the petitioner indulges in any criminal deals of narcotics or any other criminal activity, this Court will proceed to cancel her bail. In such a situation, if the petitioner is arrested, then for the child's well-being, the concerned Court might consider shifting the baby to the Childcare Unit outside the prison after taking the State's opinion. Further, while considering her bail in the fresh case(s), the concerned Court should also remember that the petitioner took advantage of the bail on her being pregnant and did not mend her ways.

61. Counsel for the petitioner to counsel the petitioner and make her understand all the conditions of the bail order in her regional language and to apprise her about the consequences if she indulges in the criminal offense again. This order is further subject to the condition that this relief given due to pregnancy, shall not be given to her again if she becomes pregnant again during the pendency of this interim bail.

62. Without commenting on the case's merits, given the undertaking of the petitioner, the petitioner makes a case for interim bail, subject to the terms and conditions mentioned in this order, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

63. In *Madhu Tanwar. v. State of Punjab*, 2023-PHHC-077618 [Para 10, 21], CRM-M-27097-2023, decided on 29-05-2023, this court observed,

[10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such



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cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.

[21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

64. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on interim bail in the FIR captioned above **from 12-06-2024 up to the period as specified in this order**, in the following terms:

(a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/); AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of non-availability, to any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b). The petitioner to hand over to the concerned court a fixed deposit for Rs. Ten thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the 'Chief Judicial Magistrate' of the concerned district, or blocking the aforesaid amount in favour of the concerned 'Chief Judicial Magistrate'. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for a similar amount.

(c). Such court shall have a lien over the funds until the case's closure or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

(d). The petitioner to also execute a bond for attendance in the concerned court(s) as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and of this bail



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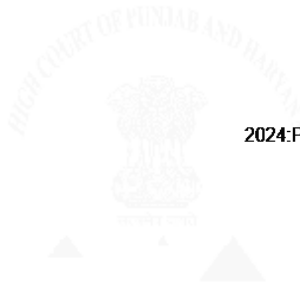
order.

(e). While furnishing personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number of an Indian citizen, (If available), when the court attesting the bonds thinks appropriate or considers the accused as a flight risk.	
3.	Mobile number (s) (If available)	
4.	E-Mail id (If available)	

65. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

66. The petitioner is directed not to keep more than one prepaid SIM, i.e., one prepaid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers. The petitioner must comply with this condition within fifteen days of release from today. The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner's name. Since, as on date, in India, there are only four prominent mobile service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all prepaid mobile phone numbers issued in the name of the petitioner, except the main number/default number linked with AADHAR, by taking such information from the petitioner's AADHAR details or any other source, for which they shall be legally entitled by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier. In *Vernon v. The State of Maharashtra*, 2023 INSC 655, [para 45], while granting bail under Unlawful Activities (Prevention) Act, 2002, Supreme



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Court had directed imposition of the similar condition, which reads as follows, “(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers.”

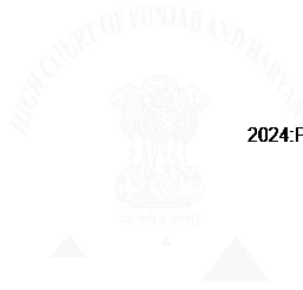
67. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the Cr.P.C.

68. If the petitioner finds bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

69. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

70. In the entirety of the facts and circumstances of the case and because this Court had granted interim bail only considering the well-being of the child in the womb, the trial Court is requested to expedite the trial and take all possible steps so that the trial is concluded within one year from today. However, should the trial not conclude within one year, it will be within the petitioner's power to file bail on merits after surrendering in the present case. It's essential to understand that if the petitioner does not surrender, this Court will not entertain her petition on merit.

71. If the petitioner is unable to attend the trial due to the reasons of any complications in her pregnancy or childbirth, or child's health, she, on filing such an application supported with medical record, be exempted from personal appearance. The petitioner through her counsel has undertaken not to claim any prejudice or bias in this regard. Given such a statement made by the petitioner, petitioner is at liberty to appear through her counsel, and she will not claim any prejudice or bias for her absence in the trial and trial Court shall not insist her for her personal appearance. It is further clarified



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that the petitioner shall not seek any adjournment at all and will also not create a situation of delay in the trial in any manner whatsoever.

72. There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

73. Petition is allowed to the extent mentioned above. Petitioner is at liberty to file fresh petition after expiry of interim bail, after surrender. The disposal of the present petition shall not stand in the way of filing and considering the fresh petition. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

13.05.2024
anju rani/Jyoti-II/Sonia Puri

Whether speaking/reasoned: Yes
Whether reportable: **YES.**