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CRM-M-57468-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57468-2024 (O&M)
Date of Decision: 22.11.2024

ARUN @ ARUN KUMAR

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Kushager Goyal, Advocate and
Mr. Himanshu Setia, Advocate for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

...

SUMEET GOEL, J. (Oral)

1. The instant petition has been filed on 12.11.2024 under Section 439 of Cr.P.C., 1973 for grant of regular bail.

As per the judgment rendered by this Court titled '*Abhishek Jain Vs. State of U.T. Chandigarh and another*' (CRM-M-31808-2024) **2024PHHC085784**, the instant petition is not maintainable under Section 439 of Cr.P.C., 1973. However, keeping in view the entirety of facts and circumstances of the case especially that the instant petition pertains to regular bail, the instant petition is directed to be considered as a petition under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023.

1. Present petition has been filed for grant of regular bail to the petitioner in case bearing FIR No.288 dated 17.07.2023, registered for the offences punishable under Sections 363 and 366-A (Section 6 of POCSO Act, 2012 and in alternative Section 376 of IPC, 1860 were added later on)



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

“To, Sh. SHO Sir NIT Faridabad Sir, I request that I am Geeta Devi W/O Amar Pal Singh resident of village Nagla Bagh Rathora PO Khimsepur Thana Mohammadabad Dist. Farrukhabad. I live in a rented room with my family in Fatehpur Chandela. I have 6 children. My youngest daughter Preeti whose date of birth is 08.09.2005. Arun S/o. Aditya Kumar resident of village Sarmarpur Nagariya PO Shamsabad Thana Shamsabad Dist. Farrukhabad has taken my daughter Preeti by luring her with the intention of marrying her. He took her away on 15/07/2003. He took her away at around 4 o'clock in the morning. Till now I have been searching for my daughter Preeti on my own. She has not been found even after a lot of searching. Please search for my daughter and take action against the boy Arun. My daughter's birth certificate is enclosed. Date 17/07/2023 Applicant RTI Geeta Devi 9582440567.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 25.07.2023. Learned counsel for the petitioner has further argued that there was consensual friendship between the petitioner and the victim which was not to the liking of the family of the victim & hence the petitioner has been falsely implicated into the FIR in question. In order to buttress his arguments, learned counsel for the petitioner has referred, *in extenso*, to the statement made by the victim under Section 164 of Cr.P.C. before the concerned Magistrate on 25.07.2023, to argue that nothing inculpatory has come out against the petitioner in the said statement. Learned counsel for the petitioner has iterated that the petitioner is a young man aged 19 years with no criminal antecedents. Learned counsel for the petitioner has submitted that the petitioner is in custody for more than 01 year and 03 months and the trial is not progressing and procrastination thereof cannot be attributed to the petitioner in any manner. Thus, regular bail is prayed for.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

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

6. The petitioner was arrested on 25.07.2023 whereinafter investigation was carried out & challan was presented on 22.08.2023. The charges in the case in question was framed on 24.01.2024 and it is not in dispute that no prosecution witness has been examined till date. Total 19 prosecution witnesses have been cited and it is indubitable, that the conclusion of the trial will take its own time. The rival contention of the learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question on account of a consensual friendship between the petitioner and the victim which was not to the liking of the family of the victim as also the weightage required to be attached to the statement recorded by the victim under Section 164 of Cr.P.C. on 25.07.2023 before the concerned judicial Magistrate viz-a-viz the statement that would be got recorded by her as a prosecution witness; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the remaining prosecution evidence.

A perusal of the orders dated 20.04.2024 and 06.08.2024 tend to indicate that the trial is procrastinating and fault thereof cannot be fastened upon the petitioner in any manner whatsoever. At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in a case of '*Javed Gulam Nabi Shaikh Vs. State of*



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arising out of SLP (Crl) No.3809 of 2024’, relevant whereof reads as under:-

“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 petitioner 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.”

The petitioner is a young man aged 19 years with no criminal antecedents As per the custody certificate dated 21.11.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 01 year, 03 months and 27 days. Suffice to say further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the present case.

7. In view of totality of factual matrix of the present case, the instant petition is allowed. Petitioner is ordered to be released on regular

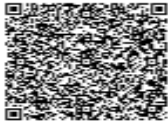
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concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (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 himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqha 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.



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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.

22.11.2024

Jasmine Kaur

(SUMEET GOEL)

JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No