

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-19176 of 2020 (O&M)

Date of decision : 11.8.2020

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Laxman Kumar Pandit @ Machhar

.....Petitioner

vs.

U.T., Chandigarh

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Gursharan Singh, Advocate
for the petitioner.

Mr. D.S. Brar, Additional PP, UT, Chandigarh,

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H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

This second petition for grant of regular bail has been filed by petitioner – Laxman Kumar Pandit @ Machhar, an accused in FIR No. 296, dated 7.10.2017, for offences under Sections 323, 354, 506, 379, 325, 397 and 34 IPC, and Section 8 of POCSO Act, registered at Police Station Industrial Area, Chandigarh.

In nutshell, the prosecution story is that on 4.10.2017 at about 8:00 p.m. when daughter of the complainant (daughter name not being mentioned to conceal her identity and referred to as 'the victim'), aged about 16 years was sitting outside their house, then

Rahul along with his friend Laxman Kumar Pandit alias Machhar (present petitioner) and another unidentified person came and started misbehaving with the victim; Rahul touched the vagina of the victim; Laxman Kumar Pandit alias Machhar incited Rahul to beat her; the third unidentified boy also beat up the victim; the complainant shouted and tried to save her daughter from the assailants; Rahul took stick from the unidentified boy and hit the complainant; the complainant had raised her right arm to save herself and the stick hit her there; the victim had become unconscious; all the assailants including the present petitioner started misbehaving with the complainant also and beat her up and they pulled the complainant by her arm and touched her breasts; during that scuffle MANGAL SUTAR of complainant fell from her neck so did her purse, which was hidden in her blouse; the purse contained cash amount of Rs.15,000/- and her MANGAL SUTAR was also valued Rs.15,000/-; Rahul took that purse and MANGAL SUTAR and all the three assailants ran away; that while fleeing Rahul threatened the complainant and kicked her twice in her stomach; Laxman Kumar Pandit alias Machhar, present petitioner and his accomplices threatened the complainant that if she reported the matter to the police, then they would see her; in the meanwhile, police vehicle came and took the complainant and her daughter the victim to hospital for treatment. After registration of the FIR, the matter was investigated.

The culprits were arrested by the police during investigation

of the case. However, they were ordered to be released on bail . The petitioner jumped bail and was declared a proclaimed offender vide order dated 18.5.2019. He was arrested in this case on 21.2.2019 and sent to judicial custody. His application for regular bail was declined by Additional Sessions Judge-cum-Judge, Special Court, Chandigarh vide order dated 5.2.2020. Therefore, he had knocked at the door of this Court craving for grant of similar relief, by filing CRM-M-12683-2020 (O&M), which was dismissed by this Court vide order dated 3.6.2020. The operative part of the said order being :-

“The allegations against the petitioner are very grave and serious and furthermore the conduct of the petitioner has been such, which clearly disentitles him to the relief of regular bail. Initially, during the trial, he had been granted bail but he absented from the Court proceedings and no justifiable reason for the same could be explained. He was declared a proclaimed offender vide order dated 18.5.2019. He was arrested on 2.12.2019. It is not his case that he himself had surrendered in the Court after being declared a proclaimed offender. Keeping in view his such conduct, he cannot be expected to appear in the Court regularly and rather there are every chances of his absconding again, in the process prolonging the trial, if granted concession of bail again. The trial against the petitioner is going on and it is expected that the same would be

concluded shortly.

Therefore, finding no merit in the petition, the same stands dismissed.”

Now, the petitioner has come to this Court again by way of filing the instant petition for grant of regular bail, which is being opposed by the Additional PP, UT, Chandigarh.

The main reason for filing the instant petition has been given in paragraph 11 of the petition, contending that circumstances have changed, since custody of the petitioner is more than 7 months and PW-1 – victim and PW-4 – complainant have turned hostile and there is no incriminating evidence against the petitioner. The proceedings in the trial Court have been held up on account of COVID-19 pandemic. Therefore, he be granted regular bail.

I have heard learned counsel for the petitioner, learned Additional PP, UT, Chandigarh, besides going through the record.

The statement made by victim in the Court is dated 17.9.2019 whereas statement made by Dropati is dated 18.10.2019. These very statements were there when the first bail application was filed and it was disposed of on 3.6.2020. The guilt of the accused is to be determined on conclusion of trial by taking into consideration the facts and circumstances of the case, evidence adduced by the prosecution, statement of accused recorded under Section 313 Cr.P.C. and defence evidence adduced by him. One or two statements cannot be picked up and interpreted to determine guilt of the accused.

Furthermore, it is for the trial Court to come to the conclusion as to

whether the accused has/have committed the offences or not. This Court while dealing with the question as to whether he is entitled to grant of bail, is not expected to hold a parallel trial and draw any such inference.

Furthermore, the factors for determining the guilt of the accused are quite different than the yardstick applied to determine the factors for grant of bail. In case of latter, the Court has to see the age and conduct of the accused, whether he is involved in any other criminal case or not, gravity of offences complained of, whether there is possibility of exercising control over the accused to ensure that he appears in the Court regularly and does not abscond, the possibility of accused trying to influence the prosecution witnesses by giving threat, inducement etc.

While dismissing the first petition, filed by the petitioner, it has been specifically observed that keeping in view the fact that accused had jumped bail during the trial and was declared a proclaimed offender and he was arrested later on and had not surrendered himself, he could not be expected to appear in the Court regularly and there were chances of his absconding again, in the process prolonging the trial. There is no reason to arrive at a different conclusion now, merely because the petitioner is behind bars for more than 7 months, is no ground to grant him bail.

Similarly, the contention raised that PW-1 and PW-4 have not supported the prosecution story against the petitioner accused, is no ground to order the petitioner to be released on bail, though on

account of COVID-19 pandemic, proceedings in the Court have been held up for some time, but hopefully, things are going to improve shortly and situation is likely to be back to normal soon.

The instant petition is absolutely without any merit and I do not see any reason to accept the same. The petition stands dismissed accordingly.

However, nothing discussed above shall have any bearing on the merits of the case.

11.8.2020
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No