

**THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-41060-2020 (O&M)

Date of decision: 02.07.2021

Mustak

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mrs. Baljit Mann, Sr. Advocate with
Mr. Tajeshwar Sullar, Advocate for the petitioner.

Mr. Karan Garg, AAG, Haryana.

H.S. MADAAN, J. (Oral)

Case taken up through video conferencing.

This second petition for regular bail has been filed by petitioner Mustak, an accused in FIR No.166 dated 14.08.2015, for offences under Sections 363, 366-A IPC and Sections 6 and 12 of Protection of Children from Sexual Offences Act, 2012, registered with Police Station Nagina, District Mewat. The first petition bearing No.CRM-M-18951-2020 was withdrawn on 04.08.2020 and order in that regard was passed, copy of which being Annexure P-6.

Briefly stated facts of the case as per prosecution story are that, criminal machinery in this case was set into motion by Ajeem son of Isab, who in the written complaint submitted by him to the police stated that his minor daughter, aged 13 years (name withheld to conceal her

identity) had been abducted by a truck driver at Badkali Chowk, Nagina on 12.08.2015 at about 3.30/4.00 PM; the name of truck driver came to be known by the complainant as Shahid son of Majeed, R/o Village Nangli; he in company of several other persons went to Alwar to search for his daughter where Shahid on seeing them tried to run away, however, they caught hold of Shahid and produced him before the police; the victim/prosecutrix was later on recovered; on the basis of this statement, formal FIR was recorded; the investigation in the case started, during the course of which, name of present petitioner Mustak cropped up, having participated in the crime; he was arrested in this case on 12.05.2020.

Petitioner Mustak had filed an application for grant of regular bail before the Court of Sessions at Mewat but was unsuccessful. As such, he has approached this Court craving for grant of similar relief, by way of filing the present petition, which is being resisted by the State counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has contended that petitioner is not named in the FIR as one of the culprits and rather only Shahid has been named as the person, who had kidnapped minor daughter of the complainant and furthermore, when the victim/prosecutrix was recovered and her statement was got recorded before SDJM (D) on 15.08.2015, she had named only Wazid and Shahid, though, she had made reference to two other persons, stating that all four of them had

forced themselves upon her in moving truck after shutting the window and made certain other allegations but then she has not specifically named Mustak as one of the wrongdoers; while her statement was recorded during the trial as PW-1 on 26.05.2016, she had stated that she could recognize only one of the accused namely Wazid son of Sakir, resident of Village Bisru and had not said anything with regard to present petitioner having been involved in her kidnapping or rape; although, she was declared as a hostile witness and Public Prosecutor was allowed to put questions to her in the form of cross-examination which she did but even then, she did not said anything incriminating against the present petitioner; she rather stated that only against Wazid had committed rape upon her; adding that she had not named anything against other person in that regard; while being cross examined on behalf of the accused, she had stated that she had not mentioned the name of Mustak son of Suban (present petitioner) and Shahid at any point of time to the police or to the Illaqa Magistrate; she stated that she does not know them and they did not commit rape upon her, adding that they were not present in the truck; copy of that statement has been placed on record by the petitioner as Annexure P-7.

Learned senior counsel for the petitioner has pointed out that name of the petitioner has cropped up in disclosure statement of Shahid, who as a matter of act, after being tried, has been acquitted of the charge framed against him; she has referred to that judgment Annexure P-4; she had added that during those proceedings also, nothing incriminating qua the present petitioner had come out. Learned senior counsel for the

petitioner has further contended that in view of COVID-19 situation, adversely affecting the functioning of the Courts, the conclusion of trial is likely to take some time, since the material witness for the prosecution has not said anything incriminating against the present petitioner. Therefore, he be granted concession of regular bail.

Learned State counsel has though opposed the request for grant of regular bail but has admitted that the petitioner is not involved in any other criminal case.

After hearing the rival contentions and going through the record, I find that it would be proper and appropriate to grant the concession of regular bail to the petitioner. Accordingly, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of trial Court/CJM/Duty Magistrate, Mewat at Nuh, subject to the following conditions:-

- (i) he shall appear in the Court on each and every date of hearing;
- (ii) he shall not give any threat or intimidation to the prosecution witnesses;
- (iii) he shall not indulge in any criminal activity;
- (iv) he shall not leave India without prior permission of the Court and shall surrender his passport, if he has got one, otherwise to furnish affidavit in that regard;

In case the petitioner violates any term and condition on which the bail has been granted to him, the prosecution would be entitled to apply for cancellation of bail.

02.07.2021

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No