

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 216

Criminal Miscellaneous No.M-5650 of 2023
Date of Decision: March 21, 2023

Mohammed Shaunky

..... PETITIONER(S)

VERSUS

State of Haryana

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Ms. Sehej Sandhawalia, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

. . .

Tribhuvan Dahiya, J (Oral)

This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.334 dated 04.08.2022, under Sections 201, 34, 366, 376-D, 506, 363 of IPC, 1860, registered at Police Station Pehowa, District Kurukshetra.

2. As per allegations in the FIR, lodged on a complaint by the victim's husband, it has been stated that one Mashkin Ali, took away his wife/victim and their son forcibly on 04.08.2022 at about 2:00 a.m., in a white colour car. The car had no registration number.

3. Learned counsel for the petitioner contended that the petitioner was not named in the FIR. Even in the statement of the prosecutrix recorded under Section 164 Cr.P.C. on 24.08.2022, the petitioner has not been named. She only stated that the main accused, Mashkin Ali, forcibly took her away and no justice had been done to her

or to the infant, aged nine months. It was only during investigation that the petitioner's name figured along with 6-7 more persons alleged to have helped the main accused taking away the complainant's wife and her son forcibly. Based on these facts, learned counsel for the petitioner contends that it is a case of false implication. Only on account of his knowing the main accused, the petitioner has been named herein, otherwise there is nothing to connect him to the offences alleged.

4. Learned State counsel, on instructions from SI Jaswant, opposes the grant of bail on the ground that trial of the case is going on and two out of twenty one prosecution witnesses have already been examined. The victim and the complainant were summoned on the last date, i.e., 17.03.2023, but they failed to appear. They have again been bound down for the next date. She, however, fairly states that as on date, current addresses of both of them are not known to the Investigating Agency, since they are migrant labourers and the complainant has even switched off her phone. She also does not dispute that some of the alleged accomplices, who were named along with the petitioner as the persons who helped the main accused in taking away the complainant's wife and son forcibly, have been placed in column 2 in the challan.

5. The facts enumerated above have been considered in totality. It is apparent that trial of the case is not likely to conclude in near future. Commission of sexual assault has not been alleged against the petitioner, whose culpability is a matter of trial. He has no criminal antecedents either. Therefore, no useful purpose would be served by confining him to custody during trial.

6. Accordingly, the petition is allowed and the petitioner is ordered to be released on bail to the satisfaction of trial Court/Duty Magistrate concerned.

March 21, 2023
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(Tribhuvan Dahiya)
Judge

<u>Whether Speaking/ Reasoned:</u>	<u>Yes/ No</u>
<u>Whether Reportable:</u>	<u>Yes/ No</u>