

CRM-M-8500-2023 (O&M), CRM-M-11535-2023 (O&M),
CRM-M-17576-2023 (O&M)

294 (3 cases) + 126 (3 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: October 04, 2023

- Sharif

1.

CRM-M-8500-2023 (O&M)

....Petitioner
- versus
- State of Punjab

....Respondent
- Bashir @ Sonu

2.

CRM-M-11535-2023 (O&M)

....Petitioner
- versus
- State of Punjab

....Respondent
- Makhandeen @ Makhan

3.

CRM-M-17576-2023 (O&M)

....Petitioner
- versus
- State of Punjab

....Respondent

CORAM: HON’BLE MR. JUSTICE ARUN MONGA

Present:- Mohd. Salim, Advocate for petitioner
in CRM-M-8500-2023.

Mr. Manoj R. Sharma, Advocate for petitioner(s)
in CRM-M-11535-2023 and CRM-M-17576-2023.

Mr. Madhur Sharma, AAG Punjab.

ARUN MONGA, J. (ORAL)

CRM-41304-2023 in CRM-M-8500-2023

For the reasons stated in application, same is allowed. Statement of PW-3
(Annexure P-5) is taken on record subject to all just exceptions.

CRM-41388-2023 in CRM-M-11535-2023

For the reasons stated in application, same is allowed. Statement and cross-
examination of complainant and victim as Annexures A-1 and A-2 are taken on record
subject to all just exceptions.

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CRM-41386-2023 in CRM-M-17576-2023

For the reasons stated in application, same is allowed. Statement and cross-examination of complainant and victim as Annexures A-1 and A-2 are taken on record subject to all just exceptions.

Main cases (O&M)

Vide this common order, above-mentioned three bail petitions, arising out of the same FIR, are being disposed of. For brevity, recitals/facts are from CRM-M-8500-2023.

2. After being declined bail by the trial Court, petitioners before this Court seek their release as an undertrial in a case bearing FIR No.33 dated 26.05.2022, registered under Sections 363, 366, 120-B of the Indian Penal Code, 1860 (for short 'IPC') (Sections 376(d), 365, 344 of IPC added later on), at Police Station, Tibber, District Gurdaspur.

3. The aforesaid FIR has been registered based on Mukhtiar Ali's statement. He stated that on May 22, 2022, he, along with his sister/prosecutrix, aged about 16 years, went to meet the daughter of his maternal aunt in village Maan. At about 6:00 a.m., he, along with the daughter of his maternal aunt, was present in the home, and his sister/prosecutrix was standing outside. In the meantime, a white-colored car arrived outside the house, and Sharif (petitioner in CRM-M-8500-2023), Manu, Sherali, Makhan (petitioner in CRM-M-17576-2023), and Hasandin alighted from the car and forcibly made the sister/prosecutrix sit in the car and thereafter fled away from the spot. It was further stated that they tried to trace her, but to no avail. The above-mentioned persons came with a proposal of marriage for his sister/prosecutrix with Sharif, but they refused, as his sister was merely 16 years old. They all, in connivance with each other, enticed away his sister on the pretext of marriage. Petitioner Sharif was arrested on October 22, 2022, petitioner Bashir @ Sonu was arrested on November 28, 2022, and petitioner Makhandeen @ Makhan was arrested on November 25, 2022. They have been in custody since then.

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4. Learned counsel for petitioner-Sharif contends that according to the prosecution, the alleged prosecutrix was about 16 years old, but when her ossification test was conducted, her age was estimated to be between 17 to 20 years. He further submits that allegedly petitioner Sharif, along with others, abducted the sister of the complainant on the pretext of marriage with petitioner Sharif. However, Sharif is already a married person with three children, and there is no reason for him to marry the sister of the complainant. He further submits that petitioner Sharif is experiencing matrimonial discord with his wife and strongly suspects the involvement of his wife in falsely implicating him in a criminal case by conspiring with the complainant.

4.1. Learned counsel for the petitioners also refers to the statements and cross-examination of the complainant and victim (Annexures A-1 and A-2) to demonstrate that the complainant and victim have retracted from their earlier statements given to the police and were declared hostile. He further submits that, in any case, based on the testimonies of the complainant and victim, it is likely that the trial will result in the acquittal of the petitioners.

4.2. Learned counsel also refers to an affidavit dated 08.04.2023 (Annexure P-3), stating that a compromise has been reached between the petitioner and the complainant. The complainant and his sister Reshma Bibi have deposed that they have no objections in case the petitioner is acquitted or granted bail.

4.3. Learned counsel for petitioners Bashir @ Sonu and Makhandeen @ Makhan contend that neither of the petitioners has been named in the FIR, nor was any specific role attributed to them. The alleged occurrence is said to have taken place on 25.05.2022, but the information given to the police was delayed by one day. He further contends that a co-accused of the petitioners, a namesake i.e. Bashir son of Betula @ Bedula, has already been granted bail by the Court below, vide order dated 06.09.2023. A copy of the same has been tendered during the hearing and is taken on record, marked as Annexure 'A'.

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4.4. Learned counsels submit that there is nothing to be recovered from the petitioners, and they are not required for further custodial interrogation. The petitioners are not involved in any other case.

5. On the other hand, learned State counsel, opposes the bail petition. He submits that petitioners have committed a serious offence. Petitioners along with co-accused abducted the sister of complainant. If released on bail, there is likelihood of petitioners fleeing from trial proceedings and/or tampering with evidence and influencing witnesses. He however, admits that there is no other case against the petitioners.

6. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

7. On a Court query, learned State counsel, under instructions from ASI Gurnam Singh submits that challan has already been presented and charges were framed on 12.07.2023. Investigation is thus complete *quap* petitioners; they are not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioners are a matter of trial at this stage. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas, petitioners has already been languishing in jail for the past more than 10 months, petitioner-Sharif being behind bars since October 22, 2022, petitioner-Bashir @ Sonu being behind bars since November 28, 2022 and petitioner-Makhandeen @ Makhan being behind bars since November 25, 2022.

8. Petitioners are being kept in preventive custody merely on an unfounded suspicion that if they are let out, they may either tamper with evidence and/or influence witnesses. In view of the testimonies of the complainant and the victim, there is no such likelihood, as apprehended.

9. Petitioners being family men and having fixed abode and clean antecedents, it is unlikely that they pose any flight risk and/or will flee from trial proceedings.

10. It transpires that there are two co-accused by similar name i.e. Bashir, while one has filed bail petition before this Court whereas another filed bail petition before

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learned trial Court who has been granted bail vide order dated 06.09.2023 by the trial Court on the basis of statement made by the victim, wherein she resiled from her statement recorded under Section 164 Cr. P.C. Complainant has also resiled from his statement given to the police and turned hostile.

11. Considering the overall scenario and, given testimonies of the complainant and the victim and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioners in further preventive custody.

12. Accordingly, petitioners are ordered to be released on bail on their furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where their cases are being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

13. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 04, 2023
mahavir/shalini

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No