

2024:PHHC:018734

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

209

CRM-M-5985-2024
Date of decision:09.02.2024

Jahir

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr.Tejbir Singh Saggu, Advocate, for the petitioner.

Mr.Hemant Aggarwal, AAG, Punjab.

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.100 dated 10.06.2023 registered for the offences punishable under Sections 365, 376-D, 384, 506 & 450 of IPC and Section 25 of the Arms Act, 1959 (Section 376-D IPC and 25 of the Arms Act, 1959 deleted during investigation) at Police Station Bichhore, District Nuh.

2. The case set up in the FIR in question is as follows:-

*“To, The SHO Sahib, Police Station Bicchor, District Nuh.
Subject:- Application against the accused Jahir, Mefeed sons of Kabira, resident of Tayda Police Station Kama, Rajasthan, Rafik s/o not known resident of Hathangaon, P.S. Bicchor and 2 other accused names and address not known. Sir, It is submitted that I, Farjana-Applicant wife of Saddam am resident of Nawalgarh Police Station Bicchor Tehsil Punhana District Nuh. My husband is a Truck driver and usually to stay out of station. On the intervening night of 05.06.2023 and 06.06.2023 at about 2.30 or 3 AM, there was rain and strong winds blowing and I was sleeping in my room alongwith my children then all the*

abovesaid accused entered all of sudden and the accused Jahir, who was having country made Pistol in his hand pointed the same towards my children and he while giving threat to kill pointed the country made Pistol toward me and asked to bring precious jewellery and cash lying in the house and sit with them in the Car and if you do not sit in the Car, you and your children would be killed. Due to fear, I handed over Silver Karas weighing 1.25 Kg, Jewellery i.e. Guliband and Hansli weighing 2 each and other small jewellery items of gold and silver and Rs. 90,000/- lying in the Almirah were handed over to the accused and beg for her life but the accused had stuffed a cloth in my mouth forcibly and the accused had abducted me and put me in their vehicle forcibly. They have kept me in custody at in a Hotel at G.T. Road beyond Kosi U.P. by threatening at Gun point. Thereafter, accused Jahir and Rafik forcibly committed rape upon me and threatened me that they have murdered many persons, and you agree to our demand and in case you did not accept our demands we will kill you and your children and husband also and they took me to Ajmer, Rajasthan where they while extending threats to me took my thumb impression on so many papers forcibly and without my consent and told me that now you are the wife of Jahir. Jahir has also committed rape upon me several times in a Hotel at Ajmer also. On 07.06.2023, when I got a chance, I called my husband -Saddam on his Mobile phone no. 8307224587 from the Mobile Phone of accused and told him regarding his abduction and rape. On 08.06.2023, my husband-Saddam, my father-Islam alias Manna, my brother-Mubarik came to the Hotel at Ajmer while searching for us and on seeing them all the accused fled away from the spot and while going they were giving threats that you will be killed if I will take any legal action against them. The accused are our distance relative and there was a enmity between us for the last some time and the above said accused have committed this crime with me, just to show us down in the society and community. The accused were harassing me for the last so many days by giving me telephone calls. There were talk regarding the compromise in the community/society till now regarding this but I did not get any

justice from the community. Therefore, it is requested that strict action be taken against the abovesaid accused. I shall be thankful to you. Thanking you. RTI Farjana-Applicant wife of Saddam resident of Nawalgarh P.S. Bicchor Tehsil Punhana District Nuh. Dated 10.06.2023.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 11.06.2023 & challan has already been presented. Learned counsel for the petitioner has further argued that the case in hand is one of consensual relationship between the petitioner and the victim. To buttress his argument, learned counsel for the petitioner has relied upon the final report under Section 173 of Cr.P.C.(challan), relevant portion whereof reads as under:-

“While the accused-Jahir was on police remand and as per the information given by the accused the CCTV footages in Ajmer city were obtained, in which it can be clearly seen that the complainant-Farjana and the accused-Jahir are roaming in the Bazar and Mufeed and Rafik are not with them and Farjana-complainant and accused-Jahir are having dinner in a restaurant, and both are eating in one plate (Thali), and they spend a long time there. One boy is present at the reception also and there is movement of lots of people.”

Thus, regular bail is prayed for.

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

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

6. The accused was arrested on 11.06.2023 whereinafter investigation was carried out & challan was presented on 18.08.2023.

Total 17 prosecution witnesses have been cited & thus culmination of trial will take its own time. The rival contention of the learned counsel for the parties that the case in hand is one of consensual relationship will 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 case of the either parties. No tangible material has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the remaining prosecution evidence. As per the custody certificate dated 08.02.2024 filed by the learned State counsel, the petitioner has suffered incarceration of more than 07 months & is not shown to be involved in any other case. Suffice to say, further detention of the petitioner as an undertrial is not warranted.

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 bail on his furnishing bail/surety bonds to the satisfaction of the learned 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/Illaqa 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.
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.

(SUMEET GOEL)
JUDGE

February 09, 2024
poonam

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No