

CRM-M-8278-2024
Date of Decision : 21.02.2024

Yakub Ali

...Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Sandeep Sharma, Advocate for the petitioner.

NIDHI GUPTA, J. (ORAL)

Prayer in this 2nd petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner during the pendency of the trial in case FIR No. 118 dated 27.11.2021 registered under Sections 363, 365, 341, 506, 148, 149, 376-D, 366 and 344 IPC 1860, at Police Station Shri Hargobindpur, Police Distt Batala, Distt. Gurdaspur

The present FIR (Annexure P-1) was registered on the basis of statement of uncle of the victim. It is admitted that victim was 19 years of age at the time of incident as her year of birth is 2002 and date of incident is 27.11.2021. Learned counsel for the petitioner, *inter alia*, submits that the petitioner has not been named in the FIR. He has only been named in the statement made by the victim under Section 164 Cr.P.C. Learned counsel further states that even in the FIR, there is no allegation of rape against the petitioner in this regard. Learned counsel for the petitioner produces the MLR as per which no human semen or male DNA was detected on the Exhibits A-1 to A-5 submitted by the prosecutrix. It is further submitted that the matter has now been compromised between the parties vide Annexure P-3 dated 1.1.2024.

Learned counsel states that the petitioner has been in custody for almost 2 years and therefore, he may be released on bail.

Notice of motion.

On the asking of the Court, Ms. Aakanksha Gupta, AAG, Punjab, accepts notice on behalf of the respondent-State and has filed the custody certificate dated 21.02.2024 in Court today. The same is taken on record. Copy thereof is supplied to the counsel opposite. As per the custody certificate, the petitioner has undergone custody as under-trial for a period of 1 year, 10 months and 8 days. Learned State counsel further informs that out of 15 witnesses 10 have been examined.

Mr. Manoj R. Sharma, Advocate, puts in appearance and has filed Memo of Appearance on behalf of respondent Nos.2 and 3. The same is taken on record.

Learned State counsel as well as counsel for respondent Nos.2 and 3 do not dispute the above said submissions made by learned counsel for the petitioner.

I have heard learned counsel for the parties and gone through the case file carefully.

Without commenting on the merits of the case, however, keeping in view the totality of facts and circumstances of the case, including the fact that the trial of the case is likely to consume considerable time as out of total 15 prosecution witnesses, only 10 witnesses have been examined so far; and keeping in view the custodial period of the petitioner; and the fact that there is no other criminal case pending against him, his further custody may not be justified. Therefore, without meaning any expression of opinion on the merits

of the case, it is ordered that the petitioner-Yakub Ali son of Maula Baksh be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

The petition is allowed.

February 21, 2024

ps

(NIDHI GUPTA)
JUDGE

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