

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-9162-2024

Date of decision: 09.04.2024

BALWINDER SINGH @ BINDER

....Petitioner

V/s

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Tanvir Singh Attariwala, Advocate,
for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

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.10 dated 19.01.2023 registered for the offences punishable under Sections 363, 366-A of IPC, 1860 and Sections 6 and 17 of POCSO Act, 2012 (Sections 17 of POCSO Act and Section 366-A of IPC have been deleted and Sections 366, 376 (2)(n) and 376(3) of IPC have been added later on) at Police Station Ismailabad, Kurukshetra District Kurukshetra.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“To, S.H.O, Sir, Police Station Ismailabad. Sir, it is requested that I am Krishan Kumar, son of Bhan Singh, resident of Dera Gurdayalpura, Chanalehari, police station Ismailabad, district Kurukshetra, On 17-01-2023, my son Manpreet, my maternal uncle father-in-law Balwan Singh, son of Kuda Ram, resident of

Dera Singpura Sangrauli, Police Station Dhand, District Kaithal who had come to Dera Gurdayal Pura Chanalehari with a girl Komal, aged 15, they after having a good meal in the night, everyone had slept in their respective rooms. When I woke up around 4.00 in the morning, I found the door of the room open and Komal was not in the room, I searched here and there a lot but till now Komal was not traced. I suspect that the girl Komal has been allure away by Bindra son of Bagga Singh resident of Dera Singhpura Sangrauli. The girl Komal has the following looks :- wheatish complexion, slim and agile body, wearing a floral printed lower or brown colored jacket and wearing jutti, her height is around 5 feet. The girl Komal should be searched and legal action should be taken against Bindra son of Bagga Singh mentioned above. Sd/-. Krishna applicant, Krishna Kumar son of Bhan Singh Basi Chanalehari police station Ismailabad Mo. No. 98969-24152, 8397973274.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 25.01.2023. Learned counsel for the petitioner has further argued that there was consensual friendship between the petitioner and the victim which was not to the liking of the family of the victim and hence the petitioner has been falsely implicated in the instant FIR. Learned counsel for the petitioner has also submitted that the petitioner is a young man aged about 19 years with no criminal antecedents. Learned counsel for the petitioner has further contended that the victim, when examined as PW-3, has turned hostile and hence the trial is not likely to culminate into conviction. 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. Learned State counsel has also submitted that the DNA report from the concerned lab has still yet not been received.

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

6. The petitioner was arrested on 25.01.2023 whereinafter investigation was carried out & challan was presented on 09.04.2023. Total 24 prosecution witnesses have been cited out of which 04 witnesses stand examined and 03 witnesses stand given up. Culmination of the trial will take its own time. The rival contention of the learned counsel for the parties as to whether there was consensual friendship between the petitioner and the victim as also as to whether the same was not to the liking of the family of the victim shall 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 trial. Nothing perceptible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the remaining prosecution evidence. The petitioner is a young man aged about 19 years with no criminal antecedents. As per the custody certificate dated 07.04.2024 filed by the learned State counsel, petitioner has suffered incarceration for about 01 year, 02 months and 12 days & is not shown to be involved in any other case. Suffice to say further detention of the

petitioner as an undertrial is not warranted in the facts and circumstances of the present case.

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/Illaq 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

April 09, 2024
poonam

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No