

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-12331-2024 (O&M)

Date of Decision: 14.03.2024

Ansh Kumar Bains @ Ansh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. C.S. Rana, Advocate for the petitioner.

Mr. Kunwarbir Singh, AAG, Punjab.

NIDHI GUPTA, J. (ORAL)

CRM-10814-2024

Application is allowed, as prayed for.

CRM-M-12331-2024

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 47 dated 25.02.2023 registered under Sections 363 and 366-A IPC (Section 120-B read with Section 34 IPC was added later on) at Police Station Haibowal, District Ludhiana.

The aforesaid FIR was registered on the basis of statement of complainant/father of the victim which reads as under:-

“....Statement of Rakesh Kumar son of Sh. Krishan Lal resident of House No. 8780, Street No. 3, New Vijay Nagar, Haibowal, Ludhiana, Age about 43 Years, Mob. No. 98728-48383. I hereby state that I am resident of above mentioned address and I do work of halwai. I am married. I have three

children. Name of my eldest daughter is Ishu, younger than her is Priya and youngest is Gagandeep. Age of my daughter Priya is about 15 Years and she study at Lajwanti Senior Secondary School, Sant Vihar, Haibowal Kalan, Ludhiana in 10th class. Yesterday dt. 24.02.2023 I alongwith my family had gone to attend wedding ceremony of my relative and we came back home at about 7:00 PM. After coming home I started to take rest and at about 7:30 PM my wife Sunita Rani said to me that our daughter has gone from home by saying that she is going to the house of our neighbor/her friend Nishu since long time and has not come back home till now. Then I visited the house of Nishu and Nishu said that your daughter Priya had come at our house but had gone back after 5 minutes. Whereupon, I came back at my house and said to my wife that Priya is not at Nishu's house. Then I and my wife tried to trace our daughter but we could not find her. I have firm belief that Anil Kumar @ Nepali son of Ram Surat resident of Joginder Nagar, Haibowal, Ludhiana, who has befriended with my daughter Priya on the name of love, has kidnapped my daughter Priya on the pretext of marriage. I was going to police station to report this incident and you met at Haibowal Chowk. Statement recorded to you, heard, read over, is correct. sd/- Rakesh Kumar....”

Learned counsel for the petitioner, *inter alia*, submits that the petitioner was not named by the complainant/father of the victim in the FIR (Annexure P-1); nor was he named by the complainant in his first supplementary statement dated 21.03.2023 (Annexure P-2). It is submitted that it is only in the second supplementary statement of the complainant dated 13.04.2023 (Annexure P-3) that an allegation has been made against the petitioner that he had assisted the main accused, namely, Anil Kumar @ Nepali, in kidnapping the daughter of the

complainant and had stayed with him at night also; and on the next date he had sent both of them in an Auto, post which they could not be found. It is further submitted that brother of the petitioner had expired on 17.02.2023, as is evident from Death Certificate (Annexure P-4). Learned counsel submits that date of alleged incident is 25.02.2023 and it is needless to say that barely a week after death of his brother the petitioner would not be in a frame of mind to indulge in activities as alleged. Further, it is submitted that petitioner has no role to play in the incident. The petitioner has been in custody since 13.04.2023. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that the present petition may be allowed and the petitioner be released on regular bail.

Learned counsel for the State has filed custody certificate dated 13.03.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 11 months and 03 days. As per custody certificate, there is no other case against the petitioner. Learned State counsel vehemently opposes the prayer for grant of regular bail to the petitioner and submits that at the time of occurrence, the victim was only 15½ years of age and she has not been recovered as yet. There are total 03 accused in the present case and only the petitioner has been arrested. Main accused, namely, Anil Kumar @ Nepali, has been declared as proclaimed offender. Challan has been presented only against the petitioner. However, out of total 09 prosecution witnesses, none has been examined till date.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality

of the facts and circumstances of the case and the custody period undergone by the petitioner including the fact that the custody certificate reveals that there is no other case against the petitioner; and also the fact that trial has not commenced, inasmuch as, out of total 09 witnesses, no witness has been examined till date, therefore, conclusion of trial will take considerable time and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Ansh Kumar Bains @ Ansh S/o Ravinder Kumar Bains, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

14.03.2024

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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No