

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-12814-2024
Date of decision: 18.03.2024

Pardeep Singh

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr.J.K.Singla, Advocate,
for the petitioner.

Mr. Anup Singh, 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.122 dated 25.05.2023, registered for the offences punishable under Sections 363, 366-A, 376 of IPC, 1860 (Act No.45 of 1860) and Sections 3 & 4 of the POCSO Act, 2012 (Act No.32 of 2012) at Police Station Sadar Mansa, District Mansa.

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

“Statement of Iqbal Singh Son of Jalaur Singh, resident of Village Uddat Bhagat Ram, aged about 40 years, M.No.82830-80473 stated that I am resident of the above mentioned address and working as labourer. My marriage was solemnized about 17 years ago with Simarjeet Kaur daughter of Mander Singh, resident of Takhtmal, Haryana, Sirsa and three children were born out from our both wedlock and out of which elder daughter Randeep Kaur aged about 14 years and two sons younger from her. My wife Simarjeet Kaur is residing at her parental village

from last two years due to having dispute with me and three children are residing with me. My elder daughter Randeep Kaur who was studying in 10th Class at Government High School, Village Mojia and whose date of birth is 18.05.2009. As per daily routine my daughter Randeep Kaur after ready for school and then left the home at about 08:00 AM for going to school but not reached in school and after finishing school time when my daughter reached at home then she was crying and she told upon asked by me that Pardeep Singh Son of Virsha Singh alongwith Dilpreet Singh alias Gori Son of Kala Singh, resident of Alampur Mandra took me on motorcycle from outside of gate of school by saying that you have been called by your Aunt (Bua) and told me that they instead of took my daughter before Aunt (Bua) rather took in any abundant house at village Joian and where Pardeep Singh has committed rape with my daughter against her wish and Dilpreet Singh was standing outside the room and after this incidence, left/drop my daughter near gate of school. Legal action be taken against both of them. I got recorded my statement, correct, Sd/- Iqbal Singh. Attested by Gurmeet Kaur ASI/679 Police Station Sadar Mansa. Dated 25.05.2023.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 26.05.2023. Learned counsel has further submitted that the prime prosecution witnesses i.e. PW-1 (victim), PW-2 (complainant/father of victim), PW-3 (aunt of victim) as also PW-4 (owner of place of alleged offence) have turned hostile and, in all likelihood, the trial is not likely to result into conviction. Learned counsel for the petitioner has relied upon a Division Bench judgment of the Bombay High Court rendered in **Suresh vs. The State of Maharashtra**, reported as **2023 (2) AIR Bom.R (Cri.) 340** to argue that the ocular version is to be

given primacy vis-a-vis. the medical version. The relevant extract of this judgment is as follows:-

“7. Further, the Hon'ble Supreme Court in Manoj and others v. State of Madhya Pradesh, [(2023 (2) SCC 353)], highlighted the need to ensure quality testing and lesser possibility of tampering with the evidence. No doubt, the DNA testing and the report is based on a well developed science and it can lead of a concluded evidence, still it depends upon the extracting of samples, its preservation and ruling out the possibility of tampering. While considering DNA report from the series of the decisions, the legal position for DNA profiling report and its probative value are concerned, it is emerging that the prosecution is duty bound to prove all the steps which were taken by the investigating agency right from collecting the blood samples, preservation etc. We may rely on the decision of the Hon'ble Chattisgarh High Court in Kisan Lal @ Champa Yadav v. State of Chattisgarh, Criminal Appeal No.565 of 2022 decided on 22.02.2023, wherein the account of many decisions on the legal aspect of DNA tests and DNA report has been considered. Further, we may also rely on the decision of the Hon'ble Gujarat High Court in Premjibhai Bachubhai Khasiya v. State of Gujarat and Another, [2009 CriLJ 2888], wherein it has been held that :-

“Positive DNA report can be of great significance, where there is supporting evidence, depending of course on the strength and quality of that evidence, even if it is positive, it cannot conclusively fix the identity of the miscreant, but, if the report is negative, it would conclusively exonerate the accused from the involvement of charge. The science of DNA is at a developing stage and when the Random Occurrence Ratio is not available for Indian Society, it would be risky to act solely on a positive DNA report, because only if the DNA profile of the accused matches with the foetus, it cannot be considered as a conclusive proof of paternity. Contrarily, if it is solitary piece of evidence with negative result, it would conclusively exclude the possibility of involvement of the accused in the offence. The positive DNA report cannot be therefore accepted by the trial Court in isolation, i.e. as sole piece of evidence to record the conviction of accused under Sections 376, 366 of Indian Penal Code”

8. Further, reliance can be placed on the decision of the Hon'ble Supreme Court in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, [(2005) 5 SCC 294], wherein it has been held that :-

"DNA evidence may have a great significance where there is supporting evidence, dependent, of course, on the strength of that evidence.

.....in every case one has to put the DNA evidence in the context of the rest of the evidence and decide whether taken as a whole it does amount to a prima facie case."

xxxx xxxx xxxx xxxx

10. *We have considered the ocular evidence as well as the scientific evidence. As regards the ocular evidence is concerned, at the cost of repetition, we would like to say that P.W.4 and P.W.5 are not trustworthy as they have changed their statements in the cross. When the ocular evidence was not supporting, conviction ought not to have been based only on the DNA test report i.e. medical report. Therefore, the finding and conclusion in the judgment by the learned Trial Court is perverse and not based on the legal principles. Therefore, it deserves to be set aside. The appeal deserves to be allowed."*

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 argued that the FSL/medical evidence available on record clearly shows & proves the culpability of the petitioner.

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

6. The petitioner was arrested on 26.05.2023 whereinafter investigation was carried out & challan was presented on 12.07.2023.

Total 21 prosecution witnesses have been cited and culmination of the trial

will take its own time. The rival contention of the learned counsel for the parties regarding the weightage required to be attached to the hostile witnesses i.e. PW-1 (victim), PW-2 (complainant/father of victim), PW-3 (aunt of victim) as also PW-4 (owner of place of alleged occurrence) shall be gone into during the course of trial. Further, the issue of the relative relevance of the FSL/medical evidence vis-a-vis. the ocular version shall also 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 tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence. As per the custody certificate dated 16.03.2024 filed by the learned State counsel, petitioner has suffered incarceration for about 09 months and 24 days & is not shown to be involved in any other case. Suffice to say, in the facts and circumstances of the present case, 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/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

March 18, 2024
poonam

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