

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-13375-2024

Date of decision: 09.04.2024

Yogesh

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Dr. Pankaj Nanhera, 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.679 dated 21.12.2023 (Annexure P-1), registered for the offences punishable under Sections 376 and 452 of IPC at Police Station Adarsh Nagar, District Faridabad, Haryana.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

“Sir, I SXXXX wife of BXXXX is resident of Ballabgarh, near Kamal Parshad, Subhash Colony. I am married and having four daughters. On the day of Dhanteras, I was at home with my children and my children were sleeping and my husband had gone to Bhageshwar Dham at Madhya Pradesh. Then, phone call of Yogesh came at 11 PM, who lives in front of my house. And Yogesh opened the door of my house and came in. Then he started doing forceful act with me and said don't tell about this to anyone and threatened me that you also have children. And forcefully he committed rape with me without my consent and went away. Making forceful physical relations is against humanity. I want strict legal action against the accused and justice be delivered to me. SD XXXXX”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 26.01.2024. Learned counsel has further argued that the

victim had earlier made a complaint on 19.12.2023 whereinafter her statement was recorded before the legal aid counsel on 19.12.2023 in which it was pleaded by her that the relationship between the petitioner and the victim was consensual in nature & hence a GD No.34 dated 19.12.2023 was recorded that no cognizable offence is made out. Learned counsel has further submitted that subsequently on 21.12.2023, the prosecutrix made another complaint in respect of which a statement under Section 164 of Cr.P.C. was recorded on 22.12.2023 wherein allegations of rape were made by the victim against the petitioner. Learned counsel has further argued that there was actually consensual relationship between the petitioner and the victim which turned sour later on & hence the petitioner has been falsely implicated in the present case. In this view of the matter, learned counsel has prayed for grant of regular bail.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail. Learned State counsel seeks to place on record custody certificate dated 08.04.2024 in Court, which is taken on record. Pursuant to order of the preceding date, learned State counsel has filed status report by way of affidavit of Vinod Kumar, Assistant Commissioner of Police, Ballabgarh, District Faridabad in Court today. The same be kept on record.

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

6. The petitioner was arrested on 26.01.2024 whereinafter investigation was carried out and challan stands presented on 17.02.2024.

Total 13 prosecution witnesses have been cited and culmination of the trial

parties; as to whether there was consensual relationship between the petitioner and victim at one point of time and the same turning sour later on as also the weightage required to be attached to statement made by the victim under Section 164 of Cr.P.C; 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 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 custody certificate dated 09.04.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of more than 02 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 in the facts and circumstances of the case.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. 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

April 09, 2024
Ajay

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