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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14891-2024 (O&M)

Date of Decision: 02.05.2024

MUKESH KUMAR

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Manoj Kumar Sood, 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.459 dated 17.07.2023, registered for the offences punishable under Sections 363, 366-A, 323 and 370 of IPC and Sections 6 and 17 of POCSO Act at Police Station Palla, Faridabad.

2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“To, The SHO, Police Station Palla, Faridabad. Sir, It is submitted that I am Vibha W/o Shiv Mohan residing at Gali No. 06, Chauhan Colony, Palla Faridabad as a tenant. On 16.7.2023 at about 5 PM, my daughter Anjali aged about 12 years left the home without informing anybody, whose appearance is whitish complexion, round face, height 4.5 feet, wearing jeans and top and hawai sleepers. I have been searching her so far but not found, she be searched for. Applicant Vibha.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 29.07.2023. Learned counsel for the petitioner has further argued that the victim as also mother of the victim/complainant have

turned hostile when examined as PW-1 and PW-2 respectively. Learned counsel for the petitioner has thus argued that, in all likelihood, the trial is not going to culminate into conviction. Learned counsel for the petitioner has further argued that there is no medical evidence available on record to substantiate the cause of the prosecution. Thus, regular bail is prayed for.

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.

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

6. The petitioner was arrested on 29.07.2023 whereinafter investigation was carried out & challan was presented on 20.10.2023. Total 21 prosecution witnesses have been cited out of which 2 material/private witnesses, namely, the victim as also mother of the victim stand examined as PW-1 and PW-2 respectively. The rival contention of the learned counsel for the parties; regarding the weightage required to be attached to the testimony of the hostile witnesses; shall be gone into during the course of trial. This Court does not deem it appropriate to deeply ratiocinate regarding this aspect of the matter, lest it may prejudice the trial. Since total 21 prosecution witnesses have been cited out of which only 2 have been examined till date, the culmination of trial will take its own time. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the remaining prosecution evidence. As per the custody certificate dated 01.05.2024 filed by the learned State counsel, the petitioner has suffered incarceration for about 09 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 instant 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 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.

02.05.2024

(SUMEET GOEL)
JUDGE

Jasmine Kaur

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No