

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

228

CRM-M-14532-2024

Date of decision:02.04.2024

Nitin @ Bittu

...Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Neeru Bansal, 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.271 dated 16.08.2023, registered for the offences punishable under Sections 6 of POCSO Act, Sections 363, 366, 376(2)(n) of IPC at Police Station Bahalgarh, Sonapat, District Sonapat.
2. The case set up in the FIR in question is as follows:-

“Sir, the brief facts of the case are that on 16.08.2023, a complaint was submitted by the complainant xxxxx D/o Om Parkash, r/o P.S. Palra, Bahalgarh Distt. Sonapat, which is as under:- To the SHO, P.S. Bahalgarh, Sir, it is stated that I, xxxxx D/o Om Parkash, aged 01.03.2005 residents of Palra, in the year of 2020, my father Om Parkash was in jail for committing murder. That Nitin @ Bittu s/o Rajesh, R/o Badoli coming to our house. Nitin is nephew (bhanja) of my elder sister in relation. He was started coming home on the second or third day and talking sympathy with me and my mother and also helping us in bringing household items. Many times, me and my brother used to go with him in his car and took my family into confidence. In Oct, 2020, me and Nitin had gone to purchase the household items at Bahalgarh. We were late on arrived. Nitin took his ECO car on Badoli's kacha way and started talking emotionally, then he started forcibly wrong physical act committed upon me, I opposed it, then he said to me, I want to marry you. Then I said this is wrong thing and I will told this thing to my family, then Nitin said to me, if you told to your family then I will commit suicide and I was scared. Nitin was started

coming home on the second or third day and started talking to me about marriage. He seduced me and kept having physical relations with me by promising me marriage. After some time, he took me away from home after promising to marry me. At that time, my aged was 16½ years. He took me at rental accommodation in H.No.505/5, Gautam Colony, Gali no.6 Narela or that where he also made physical relations with me or when I told him to marry with me then he gave assurance to me that after attaining the age of 18 years, he will perform marriage with me or that during this period, I became pregnant, When I got an ultrasound done, the doctor said it was a 14 week old baby or that when I told about my pregnancy to Nitin then he pressurized me to abort the pregnancy or that I was in stomach pain then Nitin gave me four pills or that thereafter I started bleeding and due to this reason my pregnancy was aborted. I said to Nitin, you did wrong with me, then Nitin said to me I am already married and I have three children. I was doing time pass with you or that he left me. That he physically assaulted me about 2½ or 3 years and ruined my life. Take legal action against him. Applicant Sd/-xxxx D/o Om Parkash, R/o Palra, Sonapat”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 22.09.2023. Learned counsel has further referred, *in extenso*, to the testimonies of PW-3 (mother of the victim) as also PW-4 (victim) to argue that the material private prosecution witnesses have turned hostile and hence in, all likelihood, the trial is not likely to culminate into conviction of the petitioner. 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 01.04.2024 in Court, which is taken 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 22.09.2023 whereinafter investigation was carried out and challan stands presented on 16.01.2023. Total 21 prosecution witnesses have been cited and culmination of the trial will take its own time. The rival contention of learned counsel for the parties; regarding the weightage required to be attached to the testimonies of the hostile witnesses i.e. PW-3 (mother of the victim) as also PW-4 (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 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 01.04.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of more than 06 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 02, 2024
Ajay

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