

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

224

CRM-M-15362-2024

Date of decision:04.04.2024

Surinder

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Ashok Kumar Khunger, Advocate for the petitioner.
Mr. Yuvraj 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.0091 dated 15.08.2023, registered for the offences punishable under Sections 376 of IPC (offence under Section 4 of POCSO Act & Section 366 of IPC was added subsequently) at Police Station Bahav Wala, Distridct Fazilka.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

"Statement of Ravina daughter of Menpal, resident of Village Alipura Ganganagar (Rajasthan) aged about 16 years. Mobile No. 8501857309. Stated that I am resident of the above mentioned address. I am studying in Twelfth Class in Government Senior Secondary School, Rajpura, Punjab. My parents are doing the work of labour. Approximately 6 months ago from today, the son of my paternal aunt (Bhua) namely Surinder son of Jagdish, resident of Village Jandwala Bishnoiyan (Haryana) aged about 30-35 years, who is my maternal uncle in relation, was residing with us at Alipura itself and was doing work of loading and unloading of tractor trolley on rent and thereafter he had gone back to his Village Jandwala Bishnoiyan (Haryana). Yesterday on 14.08.2023 as of routine, I had gone away to my school at Rajpura for studies, where after completion of my school time, my maternal uncle Suirinder met me outside the school, who said to me that today I have come on motorcycle to take you away to your home. I by placing reliance on the version of my maternal uncle sat on the

motorcycle with him, but he instead of taking me away to the house took me away to Roranwala Rajasthan in some field in the cotton, where it would be at about 4:00- 5:00 PM that he by forcibly developing physical relations with me committed rape with me. The field being lonely, nobody heard my noise despite being made by me. Subsequently I started weeping and he left me outside my house when it was dark. After coming home, I narrated the entire episode to my mother, due to which we after having talk with our remaining relatives have come to you for getting registered the case. You by taking appropriate action against Surinder son of Jagdish, resident of Jandwala Bishnoiyan, get delivered the justice to me. The statement has been got recorded before you, heard, gone through, the same is correct. Sd/- Ravina above. Sd/ Sunil Kumar son of Jagdish Chand, resident of Mukera Khera (Haryana) (Maternal Uncle) Signature in Hindi Sunita wife of Menpal, resident of Alipura, Rajasthan (mother). Attested Sd/- Inderjeet Kaur”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 15.08.2023. Learned counsel has further argued that the material private prosecution witnesses i.e. victim as also mother of the victim have turned hostile when examined as PW-1 and PW-2 respectively 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 03.04.2024 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 15.08.2023 whereinafter investigation was carried out and challan stands presented on 18.09.2023.

Total 19 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-1 (victim) as also PW-2 (mother of the 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 03.04.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of about more than 07 months and 21 days & 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/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

April 04, 2024
Ajay

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