

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-17042-2023 (O&M)
Date of decision: 04.04.2024

RAJINDER GAKHAR

....Petitioner

V/s

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Prabhjot Singh, Advocate, for the petitioner.

Mr. Yuvraj Singh Tiwana, AAG, Punjab.

Mr. Tarun Jatta, Advocate for the complainant.

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.207 dated 12.12.2022 registered for the offences punishable under Sections 354, 506, 34 of IPC, Section 13/14 of the Prevention of Children from Sexual Offences Act, 2012, Section 67-B of the I.T. Act (Section 376 of IPC and Section 6 of the Prevention of Children from Sexual Offences Act, 2012 added later on) at Police Station City Jalalabad, District Fazilka.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“To, Subject: Respected Sir, Hon'ble S.H.O. Sir, Police Station City Jalalabad (west). Subject:- Application against Rajinder Gakhar son of Banarsi Das Mobile No. 98552-24516, 2) Maninder Gakhar sen of Rajinder Gakhar Mobile No.77176-

38067 residents of Near Girls School, Jalalabad Tehsil Jalalabad District Fazilka; for giving threats of killing and blackmailing and publishing obscene photos and videos of my girl. Respected Sir, I am Preeti Bala wife of Vinod Kumar resident of Mongeya Wali Street, Jalalabad Tehsil Jalalabad District Fazilka, Whereby, previously also I had given one application to the Hon'ble SSP, Fazilka against the above said accused on dated 18/10/2022 whose UID NO.2255/SPL/PC, which was sent by the Hon'ble S.S.P., Fazilka to the DSP Jalalabad, for hearing. Where he called me and the accused. This application is under hearing. Where the Hon'ble DSP, Jalalabad had instructed the accused to bring the mobile phone of the applicant's daughter. But till today this mobile phone has not been given by them and I and my husband have also started receiving threats from the accused that if you do not withdraw your application then we will publish/viral the obscene photos and videos of your girl on social media. After not withdrawing my application, they made my girl's photos and videos viral on social media. After the photos and videos went viral, we started getting calls from relatives on which my daughter has come under mental depression and I am afraid that my daughter may not do anything to herself. That this information was given by us to the honorable S.H.O. Sir, Police Station City Jalalabad and the honorable SHO Sir also had gone to the spot and investigated. Therefore, through the application, it is requested that the said accused be arrested and the photos and videos from social media be removed and the accused's mobile phone and laptop be seized so that I, my family and my daughter can also get justice. It will be your kindness. Applicant SD/- Preeti Bala wife Vinod Kumar resident of Mongeya Wali Street, Jalalabad Tehsil Jalalabad District Fazilka Mobile No.82644-65128 dated 12-12- 2022”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 14.12.2022. Learned counsel for the

petitioner has further argued that the petitioner has been falsely implicated in the present FIR as the petitioner had earlier filed a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 against the father of the victim on 16.05.2022 in respect of a cheque which had bounced on 01.04.2022 and a notice in this regard was also served upon the father of the victim on 28.04.2022. Learned counsel for the petitioner has further submitted that even earlier complaints had been filed at the instance of the family of the victim on 29.03.2022 before the SSP, Fazilka and as also on 07.03.2022 before SHO, Police Station, City Jalalabad wherein the allegations made were completely different from those mentioned in the present FIR as also the DDRs. Learned counsel for the petitioner has contended that the testimony of the victim already stand recorded as a prosecution witness. Thus, regular bail is prayed for.

4. Learned counsel for the State as also learned counsel for the complainant have 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.

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

6. The petitioner was arrested on 14.12.2022 whereinafter investigation was carried out & challan was presented on 10.02.2023. Total 17 prosecution witnesses have been cited and culmination of the trial will take its own time. The testimony of the victim already stands recorded as PW-1 during the course of trial. The rival contention of the learned

counsel for the parties; as to whether the petitioner has been falsely implicated in the FIR in question and as to whether there was any cheque bouncing dispute/money dispute between the petitioner and the family 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 remaining prosecution evidence. As per the custody certificate dated 03.04.2024 filed by the learned State counsel, petitioner has suffered incarceration for about 01 year, 03 months and 19 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 present 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 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

April 04, 2024
poonam

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