

2024:PHHC:000740

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23177-2023

Date of decision: 08.01.2024

Gursewak Singh
V/s
...Petitioner

The State of Punjab
...Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Salinder Kumar Saini, Advocate for the petitioner.
Mr. Gurlal Singh Dhillon, AAG Punjab.
Mr. Abhishek Sahu, Advocate for
Mr. B.S. Bhalla, Advocate for the complainant.

SUMEET GOEL, J.

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.52 dated 13.05.2022, registered for the offences punishable under Sections 376, 452 & 34 and Section 376-D IPC (added later on) at Police Station Bhindi Saidan, District Amritsar Rural, Punjab.
2. The case set up in the FIR in question is as follows:-

“...Statement of Kanwal Kaur daughter of Ajaib Singh resident of Chhan Kala Police Station Bhindi Saidan, Amritsar aged about 20 years. Mobile No.62842 48445 stated that I am resident of above mentioned address and illiterate. My father Ajaib Singh has been died about 8/9 years ago. My brother Shera Singh is married and Sona Singh lives in his grand maternal parent's village. I do household work. On 04.05.2022 my brother Shera Singh and mother Kashmir Kaur were making Turi (Fodder) in their fields and my sister-in-law (Bharjai) Paramjit Kaur had gone to her parental house and I was alone in the house that it would be around 11.30 PM that Mewa Singh son of Bhajan Singh and Gursewak Singh and Sarba Singh residents of Chhan Kalan after scaling over the wall got entered in our house. At that time electrical bulbs were on in our home that Mewa

Singh forcibly got entered in my room and Gursewak Singh kept on standing outside in the courtyard, and Mewa Singh committed rape with me forcibly and threatened me that if you talked about the same with anyone then he would cause loss to me and both of them went away from home. When my mother Kashmir Kaur and brother Shera Singh came home then I told the entire things to them. Then 06.05.2022 we for getting my medical examination by filing an application in the Ajnala Court and by taking orders from Judge Sahab on 06.05.2022 I had got conducted my medical test on 7.5.2022. Till date we have been conversation in the village in Panchayat manner, but no solution of it was found. Today, I alongwith my mother Kashmir Singh was going to you for giving information that you have met. The photocopy of the order of Judge Sahib has been presented before you. Legal action be taken against the aforesaid persons. Statement has been got recorded, heard and it is correct. Thumb impression RTI Kanwal Kaur aforesaid Thumb impression RTI supported by Kashmir Kaur Sd/- attested S Sneh Lata I/C Women Cell PBI Team, Sub-Division Atari dated 13.5.2022.”

3. Learned counsel for the petitioner has argued that the alleged incident is stated to have taken place on 04.05.2022 whereas the FIR was registered on 13.05.2022 and hence there is delay in registration of the case which by itself speaks volume about falsity of the case; the petitioner is aged about 20 years; the petitioner has been in custody since 26.01.2023 and there is no other FIR registered against him. He further submits that material prosecution witnesses including prosecutrix have already been examined and none has supported the prosecution version. On that premise learned counsel argues that from the evidence on record, it does not appear to be a case of conviction and in all likelihood, trial is likely to result in acquittal of petitioner.

4. Learned State counsel as also counsel for the complainant have 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 records of the case.

6. The prosecutrix (when examined as PW-1), mother of the prosecutrix (when examined as PW-2) and brother of the prosecutrix (when examined as PW-3) have resiled and hence have not supported the case of the prosecution; the petitioner is in custody since 26.01.2023; there is no material on record to reflect likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence and no useful purpose is likely to be served by further keeping the petitioner in custody. On a Court's query, learned State counsel submits that challan was presented on 25.04.2023 wherein total of fifteen prosecution witnesses have been cited and material witnesses already stand examined. Further incarceration of the petitioner 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 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 Court.
- (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

January 08, 2024
Ajay

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