

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-17766-2024

Date of decision:18.04.2024

Aman Saini

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Pawan Kumar, Senior Advocate with
Ms. Vidushi Kumar, Advocate for the petitioner.
Ms. Priyanka Sadar, AAG Haryana.

SUMEET GOEL, J. (Oral)

1. This is a second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.64 dated 29.08.2022, registered for the offences punishable under Sections 377 & 506 of IPC and Sections 4, 12 of POCSO Act (charges framed under Sections 363, 366, 377 and 506 of IPC and Sections 4, 12 of POCSO Act) at Police Station Women, District Kurukshetra.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

"Sir, I Ranjeet Kaur wife of Sh. Husan Lal resident of Naisi, Tehsil Pehowa, District Kurukshetra, presently residing near Pipli Gurudwara, District Kurukshetra. On 28.08.2022, my daughter had left the house for market for some work and the above-mentioned accused used to follow her while on her way to school and used to say that he is not an ordinary boy and my daughter is a minor and the abovementioned accused enticed away my daughter to his washing centre on the pretext of a birthday party and for some time, he was conversing with my daughter and when my daughter asked him that she wants to go back to her house, the abovementioned accused overpowered my daughter with bad intention and the abovementioned accused committed rape upon her and when my daughter came back to home, she kept weeping and was frightened. That

the abovementioned accused told my daughter after committing rape on her that if she told anyone or her family members, then he will kill her and her family members. Due to this fear my daughter was frightened. When we gently asked our daughter, she narrated the entire past incident to us. It is prayed that strict legal action may be taken against the abovementioned accused for the offence of committing forcible rape upon my daughter and for threatening to kill my daughter as well as my family members. Dated 29.08.2022. Applicant”

3. Learned senior counsel for the petitioner has argued that the petitioner is in custody since 30.08.2022. Learned senior counsel has further argued that the victim as also the mother of the victim/complainant have turned hostile (when examined as PW-3 and PW-8 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 16.04.2024 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 30.08.2022 whereinafter investigation was carried out and challan was presented on 07.10.2022. Total 19 prosecution witnesses have been cited out of which all material/private witnesses stand examined. In fact 17 out of the above-said total 19 prosecution witnesses already stand examined. The rival contention of learned counsel for the parties; regarding the weightage required to be

mother of the victim/complainant (PW-8); 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 16.04.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of more than 01 year and 07 months & is not shown to be involved in any other case.

The first application for regular bail preferred by the petitioner was dismissed on 03.07.2023. The substantial change of circumstance since the withdrawal of the first bail petition on 03.07.2023 is that almost all prosecution evidence has been recorded after the withdrawal of the first regular bail petition. Moreover, the prime/private prosecution witnesses who have been examined, have turned hostile. Further the petitioner has suffered incarceration for about 09 months after the first petition was dismissed as withdrawn on 03.07.2023.

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 18, 2024
Ajay

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