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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision:21.02.2024

Ranjit Dass and others

....Petitioners

V/s

State of Punjab

....Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Prateek Pandit, Advocate for the petitioners.
Mr. Anup Singh AAG Punjab.

SUMEET GOEL, J. (Oral)

1. This is a second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioners in case bearing FIR No.78 dated 25.03.2021, registered for the offences punishable under Sections 363, 366-A, 342, 376-DA of IPC and Section 6 of POCSO Act, 2012 at Police Station Lambi, District Sri Muktsar Sahib.

2. The case set up in the FIR in question is as follows:-

“Statement of Sakshi daughter of Jagga Singh resident of near RK Medical Mandi Killianwali aged about 15 years mobile number 85719-34228, 82840-21761 stated that I am resident of the abovesaid address and I have study in 6th standard and my father is working at Soni Chicken Center my brother is also working there and my mother is in the work of selling cosmetic articles in the streets. About 8-9 months earlier I had gone from my house to buy certain articles then near Raj hospital met with one boy who talk to me and inquired about my identity and I started talking to him and he followed me till my house and he has given me his phone number. After few days I was alone at my home. Then Sandeep came in front of my house and I went outside of the house who given me one small phone of black color alongwith the sim but do not know its number. From that phone I only use to call on the phone number of Sandeep alias Deep Sandy. We used to talk with each other and Sandeep

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always use to talk about getting married. Sandeep told me that I am working at Jalandhar Hospital but I do not know the hospital. On dated 15.03.2021 Sandeep asked me to get ready tomorrow and come to the Dabwali (Punjab) bus stand (Mandi Killianwali Punjab) from where we will go to Jalandhar and get married. Upon his asking I on dated 16.03.2021 at about 6:00 A.M. in the morning went from my house to bus stand Killianwali where Sandeep was already present. When I came from my house then all the family members were sleeping, from Mandi Killianwali we went to Jalandhar through bus where Sandeep took me to one room that place can identifying after seeing. I from dated 16.03.2021 to 20.03.2021 stayed in that room 2021 stayed in where Sandeep and his friends Rahul, Ranjit, Santosh, Lambu, Sandeep alias Siyan, Billa one Santosh's brother Sandeep raped me turn by turn. When they used to call each other with their names so I came to know about their names. I also came to know that all the abovesaid persons were working near the bus stand and in the shop built-up in the bus stand (Jalandhar) whom can identified if brought before me. On dated 20.03.2021 at about 10:00A.M. when the abovesaid persons went to their works and I ran away from the room after getting a chance and came to bus stand Jalandhar and made a phone call to my mother Paramjit Kaur wife of Jagga Singh on her phone after taking a phone call some unidentified person and narrated the entire episode to my father and informed my presence at Jalandhar bus stand. Thereupon my mother came that very day to Jalandhar at about 9/10:00 P.M. and took me back to the home at night only through bus and on dated 21.03.2021 at about 6/7:00 A.M. I reached my house. I was in the shock. I could not tell anything to my parents but on dated 23.03.2021 gathered the courage and at night narrated the entire episode to my parents. Therefore on dated 24.03.2021 at about 10:00 A.M. my parents took me to a lawyer at Malout where Advocate presented me in the Court and on the orders of the Learned Court got admitted in Hospital at Lambi where doctor has treated me. At night when you came I was in shock therefore I could not get my abovesaid statement recorded before you. Today I have got my statement recorded. Sandeep under the garb of marriage and abovesaid persons have committed rape upon me turn by turn. Justice be deliver to me. I have got my statement recorded heard it to be correct. Sandeep has snatched the phone from me at Jalandhar which he has given to me. Sd/- Sakshi abovesaid. Sd/- Paramjit Kaur wife of Jagga Singh resident of RK Medical Mandi Killianwali Tehsil Malout 82840-21761.”

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3. Learned counsel for the petitioner has argued that the petitioners are in custody since 31.03.2021 and challan already stands filed in the case. Learned counsel has further argued that the victim (when examined as PW-1) and the mother of the victim/complainant (when examined as PW-2) have turned hostile. Learned counsel has further relied upon the forensic DNA test report dated 07.09.2022 (copy whereof has been produced on record as Annexure A-1), which reads as under:-

“From the above observations, it is concluded that:

1. *Human semen was not detected on the Exhibits B-1 to B-6 (Source: Vaginal swabs and Smears on slides stated to be of the victim).*
2. *Human semen was detected on the Exhibits C-1 and C-2 (Source: Kameez and Lower stated to be of the victim).*
3. *Complete Male DNA profile could not be generated from the Exhibits C-1 and C-2 (Source: Kameez and Lower stated to be of the victim) due to insufficient quantity of amplifiable DNA”*

In view of above, learned counsel has argued that in all likelihood the trial is not likely to culminate into conviction of the petitioners. 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 petitioners do not deserve the concession of the regular bail.

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

6. The petitioners were arrested on 31.03.2021 whereinafter investigation was carried out and challan was presented on 24.05.2021. The rival contention of learned counsel for the parties, as to what weightage is

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required to be attached to the testimonies of the hostile witnesses i.e. PW-1 (victim) and PW-2 (mother of the victim/complainant), will be gone into during the course of trial. The first bail petition filed on behalf of the petitioners (herein) was dismissed as withdrawn at that stage on 18.08.2022. After the said dismissal, the forensic DNA test report has now been brought on record which, *prima facie*, does not indicate the culpability of the present petitioners. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the case of either parties. Further, no tangible material has been brought forward to indicate the likelihood of the petitioners absconding from the process of justice or interfering with the remaining prosecution evidence. The petitioners have been in custody for a period of more than 02 years and 10 months. Suffice to say, further detention of the petitioners as an undertrial is not warranted.

7. In view of above, the present petition is allowed. Petitioners are ordered to be released on regular bail on their 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 petitioners shall remain bound by the following conditions:-

- (i) The petitioners shall not mis-use the liberty granted.
- (ii) The petitioners shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioners shall not absent themselves on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioners shall deposit his passport, if any, with the trial Court.

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- (vi) The petitioners shall give their cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change their cell-phone numbers without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioners 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 petitioners.

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

February 21, 2024
Ajay

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