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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-20082-2023 (O&M)

Date of Decision: 06.03.2024

Gulab Singh
Vs.
State of Haryana

.. Petitioner

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sanchit Punia, Advocate for the petitioner.
Ms. Priyanka Sadar, AAG, Haryana.

...

SUMEET GOEL, J. (Oral)

1. CRM-10537-2024

Application is allowed, as prayed for, subject to all just exceptions. Annexures A-1 and A-2 are taken on record.

Registry is directed to tag them at appropriate place.

CRM-M-20082-2023 (O&M)

2. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.24 dated 16.01.2021, registered for the offences punishable under Sections 363, 366-A, 376(2)(n) and 506 of IPC and Section 6 of POCSO Act, 2012 at Police Station Barwala, Hisar.

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

“To Hon'ble S.H.O. Sir, Police Station Barwala Respected Sir, It is requested that I am Darshana wife Shyam Lal caste Valmiki resident of Dhigtana. My elder daughter Jyoti who is married to Gulab son Mahendra caste Valmiki resident Sudkain Kalan who has been living with Jyoti for about 02-03 months in the village Bahabalpur. Whereby, on date 15-01-2021 at around 04 O'clock in the morning, has allured my little girl Kiran and taken her somewhere with him, which I searched a lot for my girl, but could not find her, Whereby, my girl's age is 15 years, Color wheat and fair height 4 feet, she was wearing mud colored clothes, whereby, my son-in-

law Gulab has allured my girl and taken her away and I have searched a lot for my girl till date but no one has been found, on which I am afraid that the above doesn't do any untoward to my girl, So, I request you to find my girl in the above case and take legal action against Gulab Thank you LTI Darshana Applicant wife of Shyam Lal Valmiki Caste resident of Dhigtana. 9068725014. Today Police Station: On reaching the above application by hand of the applicant in the police station, on finding prima facie offence under section 363/366-A IPC to be committed, the FIR of the above said offence has been registered and computer copies of the FIR were prepared. Whereby, the special reports are being sent by EMAIL in the service of the Duty Magistrate and Higher Officials. Or the special report of the case will be sent by post to Magistrate and higher the Illaqa officials. Whose police file and application has been handed over to SI Suresh Kumar 135 for investigation. SHO Sir has been informed about the instant FIR."

4. Learned counsel for the petitioner has argued that the petitioner is in custody since 14.02.2021. Investigation was carried out and thereafter challan stands presented. Learned counsel for the petitioner has further argued that the FSL report does not support the case of the prosecution. Learned counsel for the petitioner has further submitted that the victim is repeatedly failing to appear in Court to be examined as a prosecution witness despite efforts having been made by the police. Learned counsel for the petitioner has relied upon the order dated 01.06.2023 passed by this Court whereby interim bail was granted to the petitioner till further orders. The said order dated 01.06.2023 reads as under:

"1. The petitioner, through instant petition under Section 439 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking concession of regular bail in FIR No.24 dated 16.01.2021 under Sections 363, 366-A, 376(2)(n) & 506 of Indian Penal Code, 1860 (for short 'IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') registered at Police Station Barwala, Hisar.

2. Learned counsel for the petitioner inter alia contends that petitioner is in custody since 14.02.2021 and challan was presented on 26.03.2021. The prosecutrix

has solemnized marriage and her whereabouts are not known to her parents. Police, despite repeated attempts, has failed to serve summons/warrants upon prosecutrix, thus, trial is lying standstill.

3. Learned State Counsel confirms that prosecutrix is not traceable, thus, she cannot be examined. The police is trying its best to trace out the prosecutrix so that she may be examined.

4. From the perusal of summoning orders passed by the Trial Court, it comes out that prosecutrix has solemnized marriage. The police is unable to trace out whereabouts of the prosecutrix and her parents are not disclosing her address. The petitioner is in custody since 14.02.2021 and he cannot be kept in custody for indefinite period especially when despite repeated opportunities, prosecution is unable to produce the prosecutrix for her examination.

5. Considering the afore-stated facts and circumstances, this Court finds it appropriate to release the petitioner on interim bail. The petitioner is ordered to be released on interim bail till further orders subject to the conditions as may be imposed by Trial Court/Illaqa/Duty Magistrate concerned.

6. Adjourned to 27.09.2023.”

Learned counsel for the petitioner has further placed reliance upon orders dated 17.09.2022, 15.11.2022, 15.12.2022, 24.01.2023, 11.04.2023, 03.05.2023, 19.05.2023, 14.07.2023, 29.02.2023, 10.10.2023, 29.01.2024, 16.02.2024 and 01.03.2024 to argue that the victim is deliberately avoiding to appear as a prosecution witness & the petitioner is being forced to languish as an undertrial on this score. Thus, regular bail is prayed for.

5. 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.

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

7. The petitioner is in custody since 14.02.2021 and the petitioner was granted the concession of interim regular bail vide order dated 01.06.2023 by this Court due to non-appearance of the victim during the course of trial. Ever since June, 2023 the position remains the same. Despite repeated attempts made by the prosecution, the victim is not coming forward to have her statement recorded as a prosecution witness. It appears that the victim is intentionally trying to delay her testimony being recorded as a prosecution witness. There is no allegation against the petitioner for having misused the concession of interim regular bail granted to him on 01.06.2023. 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 06.03.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 02 years, 03 months and 23 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.

8. 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.
- (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.

9. 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.
10. Ordered accordingly.
11. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

06.03.2024

Jasmine Kaur

(SUMEET GOEL)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes No

Yes No