



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(206)

CRM-M-21666-2023
Date of Decision:-03.12.2024

Toshif

... Petitioner

Versus

State of Haryana

... Respondent

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CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present:- Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pranshul Dhull, Advocate
for the petitioner.

Mr. Sharan Sethi, Addl. A.G. Haryana.

Mr. Zorawar Singh Chauhan, Advocate
for the complainant.

ALOK JAIN, J. (Oral)

1. The present petition has been filed *inter alia* praying for grant of regular bail to the petitioner in case FIR No.771 dated 03.08.2018, under Sections 365, 366, 368, 506 and 120-B of the Indian Penal Code ('IPC' for short) registered at Police Station Ballabgarh City, District Faridabad.
2. On 07.11.2024 following orders were passed:-

"Learned counsel for petitioner has submitted that the narration of events was that the petitioner and the deceased Nikita were in a relationship, however it was alleged by the complainant that the petitioner had abducted his daughter Nikita and subsequently FIR No.771 dated 03.08.2018 registered under Sections 365, 366, 368, 506 IPC read with Section 120-B IPC at Police Station City Ballabgarh, Faridabad was



lodged. Later on in the above-said FIR, the matter was compromised and authorities went on to file the cancellation report. Meanwhile before the FIR could be finally cancelled, the deceased Nikita was murdered by the present petitioner for which another FIR No.667 dated 26.10.2020 registered under Sections 302, 364 IPC read with Section 120-B IPC and Sections 25, 25(1) of Arms Act at Police Station City Ballabgarh Faridabad was lodged and the petitioner has been convicted in the second FIR and since then he is in custody. Learned counsel for the petitioner further submitted that in the present case, the allegations are only with regard to Sections 365, 366, 368, 506 IPC read with Section 120-B IPC and the petitioner has been shown to be in custody only for 4 months in present FIR No.771 dated 03.08.2018 and hence has prayed for concession of bail.

At this stage, learned State counsel assisted by learned counsel for the complainant submits that although the complainant has been duly examined, however, one more material witness namely Hakim is to be cross-examined, for which the matter is now fixed for 20.11.2024 and has opposed the grant of concession of bail to the petitioner on a specific ground that on an earlier occasion also the matter has been compromised by the complainant in the present FIR on account of the pressure exerted by the petitioner and his family. Counsel for the State further submitted that the present FIR was reopened and further investigation was ordered by the Court on account of the subsequent events to which learned Senior counsel has reiterated that the same cannot be taken as a ground for declining the concession of bail to the petitioner as he already stands convicted for that subsequent event in a separate FIR.

*Heard learned counsel for the parties and considering the fact that one more material witness is yet to be examined before the trial Court on 20.11.2024, matter is adjourned to **03.12.2024**.*



In the meanwhile, the trial Court shall ensure that the cross-examination of witness Hakim, which is fixed for 20.11.2024 is completed before the next date of hearing.”

3. As per the report received from the concerned Court, private witness Hakim has also been examined on 20.11.2024 and learned State counsel has filed the custody certificate and has submitted that four out of thirty five witnesses have already been examined and rest of the witnesses are official witnesses.
4. Learned counsel for the petitioner has submitted that the petitioner already filed an appeal against his conviction in the other FIR No.667 dated 26.10.2020 under Section 302 IPC and even if the petitioner is granted the concession of regular bail in the present FIR, he would not be released till the time he is granted concession of suspension of sentence in abovesaid FIR No.667/2020. He further submitted that in fact in the present FIR, the matter had been compromised between the parties and the complainant got his statement recorded and accordingly cancellation report was accepted by the learned Court below vide order dated 07.01.2020, however, because of the subsequent event for which FIR No.667 dated 26.10.2020 under Section 302 IPC was filed, the petitioner has been taken in custody in the present case also.
5. Learned State counsel assisted by learned counsel for the complainant have vehemently submitted that the grant of concession of regular bail to the petitioner will be detrimental to the prosecution as the petitioner has demonstrated by his act and conduct on earlier occasion also when the complainant was forced to get the compromise and subsequently statement of complainant was recorded for cancellation of the FIR but this



only led to the loss of his daughter, who was point blank murdered by the petitioner and therefore, the petitioner does not deserve any leniency. He further submitted that the prosecution is bound to succeed and the petitioner will be convicted in the present FIR also and hence he should not be granted the concession of regular bail. While summarizing, he has also submitted that in case this Court granted concession of regular bail, this order should not be considered in case, the petitioner applies for concession of suspension of sentence in the appeal.

6. Heard learned learned counsel for the parties at length and considering the fact that the petitioner is in custody since 23.11.2020, though in the other FIR and his custody in the present FIR is only four months and three days, the trial is likely to take time, no useful purpose would be served by keeping the petitioner in custody, hence, the petitioner is entitled to the grant of concession of regular bail but with a rider that this order shall not be taken into consideration by the Court of competent jurisdiction in case the petitioner applies for suspension of sentence.

7. Without commenting upon the merits, the present petition is allowed and the petitioner is ordered to be released on bail, if not required in any other case, subject to his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned but with a clear rider that the petitioner shall not seek any concession on the strength of this order at the time of applying for suspension of sentence in the appeal pending before this Court. He shall, however, be released on the following conditions:

- i. The petitioner shall declare his ordinary place of residence and the mobile number used by him.

- ii. He will not switch off his mobile and in case of any technical glitch, he has to give an alternate number, which will be available in his absence.
- iii. He will mark his presence before the SHO concerned, after every 15 days and in case the SHO refuses to mark his presence, he is permitted to make an application before the Illaqa Magistrate, concerned.
- iv. He will not leave the country without the prior permission of the Court, for which he will submit the copy of his passport also. However, in case, the petitioner does not possess a valid passport, then he shall file an undertaking to the said effect before being released.
- v. The petitioner shall abide by the terms and conditions as imposed in addition to Section 439 of Cr.P.C.

8. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and this order shall not be considered as parity qua any other co-accused in any manner whatsoever.

9. It is made clear that, in case, the petitioner is found involved in any such activity once again, the State is at liberty to promptly move an appropriate application for cancellation of bail detailing out the circumstances and violation of the condition(s) of bail.

03.12.2024
Gaurav Sorot

(ALOK JAIN)
JUDGE

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No