



CRM-M-19846-2024 (O&M)

1

105+211

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19846-2024 (O&M)
Date of Decision: 08.07.2024

Usha Devi

.. Petitioner

Vs.

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

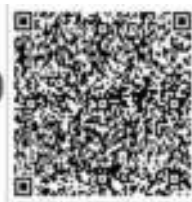
Present: Mr. Shivansh Malik, Advocate for the petitioner.
Ms. Priyanka Sadar, AAG, Haryana.

...

SUMEET GOEL, J. (Oral)

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.35 dated 03.04.2021, registered for the offences punishable under Sections 363, 366A, 354, 376, 376-D, 370, 201, 342, 372, 373, 468, 471 and 120-B of IPC, Sections 4 and 8 of POCSO Act (during investigation, Section 6 of POCSO Act and Sections 376-D, 201, 342, 372, 373, 468 and 471 of IPC have been added, however, charges have been framed under Sections 342, 363, 366, 376, 376-D, 354, 370, 372, 373, 468, 471, 120-B and 201 of IPC and sections under the provisions of POCSO Act have been deleted) at Police Station Women Police Station, Charkhi Dadri.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“That on dated 03.04.2021, Professor Attar Singh Sheoran resident of MC Colony and Amit son of Rajpal resident of Phogat Sanjarwas has presented a minor by coming present in police station in unclaimed condition. On asking of her name and address, she told her name Deepmala Chetriya daughter of



Kiran Chetriya resident of Village Gela Ukhadi, District Teen Sukiya, Assam aged 16 years, who was presented before Child Welfare Committee, Charkhi Dadr, who got recorded her statement, which is that: My name is Deepmala Chetriya. My father name is Kiran Chetriya. My mother name is Renu. My age is about 16 years. My village is Gela Ukhadi, District Teen Sukiya, Assam. On dated 30.03.2021, Roshan Ali, a resident of my village, whom I call brother, who is from Hijugudi-Highway Road, Assam, brought me to Delhi with him on the pretext of getting me the cleaning work, which I came with him without informing anyone at home. After coming to Delhi, that person sent me with some madam, whose name-address don't know, she brought me to Dadri. Then she put me in her house. From there I was sent to a room in the field with two unknown persons. I do not know that place. There were two other people in the farm room who molested me, then, I started crying. They left me they did not do any wrong to me. In the morning, on dated 01.04.2021 one of them, whose name I don't know, took me to a hotel in a secluded place. There he did the wrong act with me. After that he took me to that madam. I ran away as soon as I got a chance from there. I do not know the way here, I met two uncles on the way. Who brought me to the police station. On coming forward, I can identify those persons and madam. I want that action should be taken against them. My phone no. is 60007- 03401, which is with madam. I studied in 6th class. Sd/- Deepmala Chatriya Sd/ Suman Jangra, Charkhi Dadri, 03.04.2021. Victim Deepamala's statement was recorded by Suman Jangra member Child welfare Committee. From the above statement the offence u/s 363, 366-A, 354, 376, 370, 120 IPC and Section 4 and 8 of POCSO Act, 2012 is found to be committed and a lady of officer Anita is sent to the women Police Station for the registration of FIR no. 35 dated 03.04.2021 u/s 363, 366-A, 354, 376, 370, 120 IPC and Section 4 and 8 of POCSO Act, 2012."

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 28.07.2021. Learned counsel for the petitioner has further argued that there are as many as 63 total prosecution witnesses have been cited out of which only 33 witnesses have been examined/given up till date and thus trial will take a very long time to conclude. Learned counsel for the petitioner has further argued that the victim has not supported the case of the prosecution *in toto*. Learned counsel for the petitioner has further argued that no plausible incriminating evidence has been brought on record against



CRM-M-19846-2024 (O&M)

3

argued that the co-accused, namely, Ajay and Dayanand @ Deepanshu have been granted the concession of regular bail by this Court whereas the co-accused, namely, Sanjay and Vikas have been granted the concession of regular bail by the trial Court. Thus, regular bail is prayed for.

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.

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

6. The petitioner was arrested on 28.07.2021 whereinafter investigation was carried out & challan was presented on 10.08.2021. It is not in dispute that total 63 prosecution witnesses have been cited out of which only 33 witnesses have been examined/given up till date. Indubitably, this is the third bail petition preferred by the petitioner before this Court.

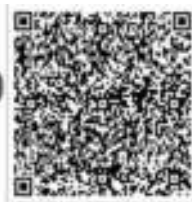
The petitioner was not successful in the earlier two bail petitions which were decided on 30.08.2022 and 16.01.2024. It would be apposite to refer herein to a judgment passed by this Court in **CRM-M-13315-2024**, titled as '**Bhisham Singh Vs. State of Haryana**' wherein it has been held as follows:

"11. As an epilogue to the above rumination, the following principles emerge:

I Second/successive anticipatory bail petition(s) filed under Section 438 of Cr.P.C., 1973 is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II Such second/successive anticipatory bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.

III For the second/successive anticipatory bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in



circumstances and showing of a mere superficial or ostensible change would not suffice.

IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Accordingly, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive anticipatory bail petition(s).

V In case a Court chooses to grant second/successive anticipatory bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.

VI Once a plea for anticipatory bail has been dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or dismissed on merits by the High Court, no second/successive anticipatory bail petition(s) shall be entertained by a Sessions Court.”

It is not in dispute that total 63 prosecution witnesses have been cited out of which only 33 witnesses have been examined/given up till date. A perusal of the zimni orders brought on record by the petitioner especially the zimni/interim orders recorded by the trial Court after the rejection of the last regular bail petition preferred by the petitioner on 16.01.2024, reflect that the trial is going on at a snail pace. It would be apposite to refer herein to a judgment passed by the Hon’ble Supreme Court in a case of ‘**Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another**’ decided in **Criminal Appeal No.2787 of 2024 arising out of SLP (Crl) No.3809 of 2024**’, relevant whereof reads as under:-

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents. juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect, may be, because of the stress of circumstances,



or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19 If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20 We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly. howsoever stringent the penal law may be.

21 We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.”

There is no gain saying that an accused has a valuable right for speedy trial. In the instant case, though the petitioner is accused of serious offence, yet it cannot escape attention of this Court that 33 witnesses have been examined/given up out of total cited 63 prosecution witnesses whereas the petitioner is in custody since a period of about 3 years as an undertrial.

The rival contention of the learned counsel for the parties; as to whether incriminating evidence has been brought forward against the petitioner in the trial proceedings as also the weightage required to be attached to the testimony of the victim who is stated to have not supported the case of the prosecution *in toto*; 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 remaining prosecution evidence. As per the custody certificate filed by the learned State counsel,

**CRM-M-19846-2024 (O&M)****6**

is shown to be involved in other cases also but as per the custody certificate, she is on bail in all cases. Suffice to say, further detention of the petitioner as an undertrial 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 her 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 herself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit her passport, if any, with the trial Court.
- (vi) The petitioner shall give her cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change her cell-phone number without prior permission of the trial Court/Illaqha Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.



CRM-M-19846-2024 (O&M)

7

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.

08.07.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No