

CRM-M-20692 of 2024

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M-20692 of 2024

DATE OF DECISION :- 08.08.2024

Amritpal Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**Present:-** Mr. Bhupinder Ghai, Advocate for the petitioner.

Mr. Anup Singh, AAG, Punjab.

None for respondent No. 2.

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.331 dated 31.12.2021, registered for the offences punishable under Sections 376 of IPC and Section 6 of POCSO Act at Police Station Jandiala, District Amritsar.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

“Statement of Shranjit Kaur D/o Harjinder Singh R/o DHETA Tehsil Khadur Sahib District Tran Taran Age about 17 years mobile no 9464562772 stated that I am resident at the above said address and have passed matriculation. I am doing course of learning stitching at Bibi Kola Ji Welfare Centre Jandiala Guru District Amritsar for the last two Months on dated 22.11.2021 I went from my home village Dheta to Stitching Centre at Jandiala Guru by Bus where I reached Bus Stand Jandiala Guru at 11.00 where boy from my village namely Amrit Pal Singh S/o Fateh Singh whom I Knew earlier was



present. Who took me to Amritsar from Bus Stand Jandiala Guru by force and where we remained in a room of a Hotel. Then my parents got an complainant registered in Police Station VEROWAL me and the police recovered me from the shoes counter of Golden Temple Darbar Sahib With the help of Parents of Amrit Pal where Amrit Pal left me alone and flee Amrit Pal have done physical Relations with me in the room of Hotel action may be taken against accused my date of Birth is 08.01.2005 I have heard this stamen which is correct Deponent Sharnjit kaur above. Attested by Simerjit Kaur ASI. Police Proceedings today I,ASI was called by SHO P.S Verowal through wireless Message and reached police station where Sharnjit Kaur above made a statement in the presence of Baljit kaur Sarpanch R/o Dheta from which an offence under section 376 IPC and 6 POCSO Act is made out therefore the same Is handed over to MHC for the registration of the case and from the statement the offence is committed at police station Jandiala Guru District Amritsar Rural therefore the above writing is being sent along with FIR O to PS Jandiala District Amritsar for further investigation the special report are being sent to officer and control Room through Wireless SD Simrjit Kaur ASI Sakhi van staff Tran Taran dated 24.01.2021 at P.S Verowal 6:55 PM.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 10.01.2024. Learned counsel has further argued that the petitioner has been falsely implicated into the FIR in question as an FIR under Sections 279/337/338/427 of IPC has been registered on 17.09.2022 against the father of the victim for killing of the father of the present petitioner. Learned counsel for the petitioner has further referred to orders dated 17.05.2024 and 29.07.2024 to argue that the prime prosecution witnesses namely PW-Sharanjit Kaur, PW-Daljit Kaur and PW-Harjinder Singh (mother of the victim and father of the victim) are not repeatedly



turning up to have their testimonies recorded. 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 07.08.2024 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 10.01.2024 whereinafter investigation was carried out and challan stands presented on 22.02.2024. Total 18 prosecution witnesses have been cited.

The order dated 17.05.2024 passed by the trial Court reads as under :-

“This case is received by way of transfer. Pws Sharanjit Kaur, Daljit Kaur and Harjinder Singh are present, but they moved their written request for adjournment, which is considered and allowed. As such, above said witnesses are bound down for 29.07.2024.”

For the said date, Investigating Officer be also summoned.”

The order dated 29.07.2024 passed by the trial Court reads as under :-

“No PW is present. Bailable warrants of PWs Sharanjit Kaur, Daljit Kaur and Harjinder Singh not received back. Now, fresh bailable warrants of PWs Sharanjit Kaur, Daljit Kaur and Harjinder Singh be again issued for 20.09.2024.

For said date, Investigating Office be also summoned and production warrants of accused be also issued.”



A perusal of the above said two orders clearly reflects that the prime prosecution witnesses (PW-victim, PW-mother of victim and PW-father of victim) are not repeatedly turning up to have their testimonies recorded.

The Hon'ble Supreme Court in a judgment titled as "***Javed Gulam Nabi Shaikh versus State of Maharashtra and another***" in Criminal Appeal No. 2787 of 2024, has held as under:-

"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."

The Hon'ble Supreme Court has held that the accused cannot be kept into indefinite custody in case the requisite prosecution witnesses are not coming forward. The rival contention of learned counsel for the parties; as to whether petitioner has been falsely implicated into the FIR in question; 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 07.08.2024 filed by learned State counsel, the petitioner has suffered incarceration for about 06 months and 25 days. Further, as per the said custody certificate, the petitioner is said to be involved in another FIR No. 149 dated 13.05.2020 registered for offences punishable under Sections 326,452,506,188,148,149 of IPC at Police Station Verowal, District Amritsar, Punjab. The said FIR was registered in the year 2020 and the petitioner is stated to be on bail in that case. Keeping in view the totality of facts and circumstances of the case, the alleged involvement of the petitioner in another FIR cannot be said to be sole basis for rejecting the prayer for grant the regular bail in the instant FIR.

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 cell-phone 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

08.08.2024
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No