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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22454-2024 (O&M)
Date of Decision: 16.07.2024

KHUSHAL ALIAS KUSHAL WALIA

.. Petitioner

Vs.

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Manjot Gujral, Advocate and
Mr. Vijay Kumar, Advocate for the petitioner.

Mr. Anup Singh, AAG, Punjab.

...

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.086 dated 18.07.2023, registered for the offences punishable under Sections 376 and 506 of IPC at Police Station Mullanpur Garibdass, District Mohali.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“Duplicate Statement, "Declaration Kiran D/O Late Avtar Singh Resident # 731 Village Kubra Hall Jaswant Singh (Brother-in-law) Resident Rani Majra Police Station Mullanpur Age 24 Years Mo. 8437463601. Declared that I am a resident of the said address and my sister, brother-in-law has I have studied BA from PGI Chandigarh living at village Rani Majra. After my studies I used to go to my mother Mandeep Kaur's rental shop near village Barail to work. Prosperous residents used to come to our shop to buy a lot of goods. With whom I became friends from last 4-5 months. And we used to talk about getting married, about marriage. With whom we used to have physical relations in different places with mutual consent. Our friendship was known to our family members. It started. And both the families started preparing for the marriage by talking about mutual marriage. Meanwhile, Khushal's mother Pooja told my brother-in-law Jaswant Singh

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on the phone that our cast is Wally and Kiran's-cast-is Ramdasi, because of which we Kiran cannot marry Khushal. Due to which Krith ended the marriage of Khushal and me 10 days ago. But Khushal used to talk to me on the phone and ask him to marry me. On 16.07.2023, Khushal told me over the phone that both of us will meet my mother for marriage. On 17.07.2023 at around 12:00 PM I went to Mulanpur along with Khushal to his Acura. Khushal took my phone and put it in Acura's digi and instead of taking me to his mother, Khushal took me to Sec 45 Hotel. I don't know the name of the hotel but I can identify it. In the hotel, Khushal asked me to come in but I refused. On which Khushal threatened me that I have your photos and videos if you don't come in the room then I will make your photos and videos viral. We stayed in the room for about 01 hour where Khushal forcibly had sexual relations with me 02 times without my consent. At this time Mev could not talk to anyone on the phone because she was in possession of the phone. After that Khushal left me near Gracia Hospital Mohali near my house. Khushal has had sexual relations with me by giving me the illusion of marrying him. Justice should be given to me by taking appropriate legal action in this regard.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 18.07.2023. Learned counsel for the petitioner has submitted that the first bail petition preferred by the petitioner before this Court was dismissed as withdrawn on 01.03.2024 as the victim was yet to be examined as a prosecution witness at that time. Learned counsel for the petitioner has further submitted that the testimony of the victim stands recorded thereafter on 06.06.2024. Learned counsel for the petitioner has further argued that a bare perusal of the FIR reflects that there was consensual relationship between the petitioner the victim and even marriage proposal was being considered by the respective families of the petitioner and the victim which could not fructified later on due to an issue arising out of the caste difference between the petitioner and the victim. Thus, regular bail is prayed for.



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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 18.07.2023 whereinafter investigation was carried out & challan was presented on 30.10.2023. Total 25 prosecution witnesses have been cited out of which only 2 prosecution witnesses, namely, the victim and the brother-in-law of the victim have been recorded. Indubitably, the first application/petition filed by the petitioner for grant of regular bail before this Court was dismissed as withdrawn on 01.03.2024 since the victim was yet to be examined as a prosecution witness at that time. However, the victim has thereafter testified as a prosecution witness on 06.06.2024. It would also not be out of place to mention herein that after the withdrawal of the first petition for regular bail on 01.03.2024 the petitioner has suffered incarceration for about 4½ more months and the trial does not seem to be concluded in near future as about 23 prosecution witnesses are yet to be examined. The rival contention of the learned counsel for the parties; as to whether there was consensual relationship between the petitioner and the victim as also the factum of marriage proposal between the petitioner and the victim being dropped by their respective families on account of difference in the caste; 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

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interfering with the remaining prosecution evidence. As per the custody certificate dated 15.07.2024 filed by the learned State counsel, the petitioner is stated to be in custody for about 11 months and 25 days. Though the petitioner is shown to be involved in 6 other cases but all pertain to offence under Section 379/411 IPC and a critical analysis of the details of the FIRs would reflect that no fresh case has been registered against the petitioner since the year 2018, therefore, keeping in view the entirety of facts and circumstances of the case, this Court does not deem it appropriate to decline the concession of regular bail to the petitioner on his being involved in other cases as well. 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 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.



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- (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.

- 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.

16.07.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No