

CRM-M-24254 of 2024

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

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CRM-M-24254 of 2024

DATE OF DECISION :- 31.05.2024

Balwan

...Petitioner

Versus

State of Haryana

...Respondent

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

Ms. Priyanka Sadar, AAG, Haryana.

Ms. Shiwani Jaglan, Advocate for the complainant.

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.509 dated 25.08.2023, registered for the offences punishable under Section 6 of POCSO Act and Section 506 of IPC and later on added Section 376-AB of IPC at Police Station Krishna Gate, Thanesar, District Kurukshetra.

2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

“The copy of writings is as under- To, The SHO, P.S. KRISHANA GATE, KURUKSHETRA. Subject- Regarding raping a minor girl by her father. Sir, it is humble request that I Kamlesh Rani w/o Balwan, am permanent resident of village Jhinjharpur. Sir, I have been living in a rented house in the street in front of Kurukshetra Narkatari Road, Little Vaishyam School. Sir, I have two daughters, the elder daughter is 11 years old and the younger daughter is of five years of age. Sir, my



elder daughter Swati aged 11 years, studies in 7th class and she was raped by her own father, Balwan. Sir, on 20.08.2023 when I was walking outside in the evening, I heard the sound of crying from the house. I went inside and saw that my husband is raping my daughter. When I caught him, he immediately ran away from there. I asked my daughter who told that his father is raping her since long time. On my refusal or saying to my mother. he beats me and threatens to kill me. Sir my daughter is very scared. I fear for my life. We want justice and legal action should be taken against him. My husband is away from home since then and I don't know where he is, Hence I request with folded hand to provide justice to me and my daughter. Thanking You. Dated-25.08.2023. Applicant Sd/- Kamlesh Rani."

3. Learned counsel for the petitioner has argued that the petitioner was arrested on 26.08.2023. Learned counsel for the petitioner has further argued that victim as also the mother of the victim/complainant, examined as prosecution witnesses, have turned hostile. He has also placed reliance upon an affidavit dated 30.04.2024 (a copy thereof has been appended as Annexure P-4 with the present petition) to argue that the petitioner has been falsely implicated into the FIR in question. 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 29.05.2024 in Court, which is taken on record.



Reply by way of affidavit of Sh. Surinder Singh Bhoria, IPS, Superintendent of Police, Kurukshetra filed in the Court today. The same be taken on record; relevant whereof reads as under:-

“It is again further submitted that when the complainant did not supported the prosecution case the undersigned vide office memo No. 33265 dated 28.05.2024 has requested to District Attorney Kurukshetra to file an application under Section 191 and 195 of IPC read with Section 340 of Cr.P.C in case FIR No. 509 dated 25.08.2023 under Section 506 of IPC and 6 of POCSO Act, PS Krishna Gate, Thanesar and the same has been filed before the Ld. Trial Court and same is fixed on 02.08.2024. The copy of same is attached as Annexure R-V for the kind perusal of this Hon’ble Court.”

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

6. The petitioner was arrested on 26.08.2023 whereinafter investigation was carried out and challan stands presented on 30.10.2023 Total 17 prosecution witnesses have been cited out of which 8 have been examined & hence and culmination of the trial will take its own time. The rival contention of learned counsel for the parties regarding; the weightage required to be attached to the testimony of the hostile victim as also the hostile mother of the victim/complainant as also the weightage and veracity of the affidavit dated 30.04.2024 sworn in by the complainant; 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 29.05.2024 filed by learned State counsel, the petitioner has suffered incarceration for more than 9 months & is not shown to be involved in any other case.

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case. Needless to say that the proceedings initiated against the complainant, as stated in the status report filed by the State of Haryana today in the Court, shall be considered on merits thereof without being influenced by grant of bail to the petitioner.

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 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.

(SUMEET GOEL)
JUDGE

31.05.2024
P.Singh

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