



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

220 CRM-M-25119 of 2024
DATE OF DECISION :- 18.07.2024

Anas ...Petitioner

Versus

State of U.T., Chandigarh ...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Ms. Anmol, Advocate for the petitioner.

Mr. Manish Bansal, P.P., U.T., Chandigarh
with Ms. Diksha Sharma and Mr. Shaurya Nagpal, Advocates.

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.124 dated 24.07.2023, registered for the offences punishable under Sections 376(2)(n), 306,34 of IPC and Sections 4, 6 of POCSO Act at Police Station Sector 39, Chandigarh.

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

“To The S.H.O. Police Station Sector 39, Chandigarh. Subject: For taking action against accused Anus and Ashmita for encouraging my daughter Kashish to commit suicide and after alluring her to perform marriage and committing rape forcibly. Sir, I, Rakesh Kumar son of Shri Ajit Ram, am resident of House No.2427, Sector 40C, Chandigarh. Name of my son is Manan and name of my daughter was Kashish. Age of my daughter Kashish was seventeen (17) years. Since the month of



June, 2023, my daughter Kashish generally used to sit alone in the room and remain sad and silent. On 19th June, in the evening when I had reached at my house and went in the room of my daughter Kashish, I saw that she was weeping badly while lying on the bed. When I asked my daughter the reason, she was feared badly. Kashish told me that she was having affair with a boy namely, Anus for last three years, who earlier disclosed his name as Vijay and told his religion as Hindu and he alluring her (Kashish) to perform marriage had made physical relations with her many times, but later on she came to know that he is from Muslim religion and his real name is Anus. Kashish told that Anus after keeping him in dark, by disclosing his wrong religion and alluring her to perform marriage, continued making physical relations and now Anus after using him left her and is in relation with some girl namely, Ashmita who is working with Anus. Anus used to tell to Kashish that you may die, but I would not perform marriage with you. Kashish told that earlier Anus continued pressurizing her to adopt Islam religion and after telling her rules of Islam religion got the same written from her and used to say her that if Kashish has to perform marriage with Anus, first adopt Islam religion. I persuaded my daughter and asked to talk with parents of that boy and to make a complaint, then Kashish told that Anus would kill her, if such step is taken against him. Then I keeping in view mental position of Kashish and thought it not appropriate to inquire about the boy by putting pressure, Kashish used to remain under fear at home and used to remain sad. As and when I tried to ask reason, she told that Anus and Ashmita together harass me and are saying me that now you may die and only then Anus would leave you. On hearing this I asked her again to make a complaint, then she again started saying about the threat given by Anus to kill my family. In the last week of June, 2023, when I came back to home from the office, I saw that my daughter had suffered injury below eye



and she was weeping. When I asked her reason, Kashish disclosed that today Anus had called her to meet where Ashmita was already present. They both publically insulted Kashish in the Market and pulled her and threatened to leave Anus. After that Ashmita went from there and Anus after taking my daughter Kashish took her to a room on the pretext of talking, where he made physical relations forcibly with Kashish and when Kashish opposed him, he had beaten Kashish, due to which she suffered injury below his eye. Kashish also disclosed me that Anus after committing her rape started saying that if Kashish accept Islam religion, he can think over to perform marriage. Kashish told that Anus had given some pages containing Islamic Kalmas written thereon to read the same. When I myself saw the book in her hand, therein a coloured photo of Anus and alongwith said Islamic Kalmas, pages regarding adopting religion were found. I persuaded my daughter but still he continued weeping. I had become angry on hearing rape with Anus forcibly, but thinking about the slander of my young daughter, prevented from getting a complaint registered. Yesterday on dated 22.07.2023 in night at about 10:30 PM, I was present at my home, and went to give food to my daughter Kashish in her room, then I saw that she was sitting in tension. When I asked her reason, she disclosed that today Anus has told him that leave him and die after strangulating and only then he (Anus) would get rid of her. On hearing this I myself had become humiliated and after persuading Kashish for some time, after putting her meal came down in my room. Today on dated 23.07.2023 in the morning at 08.15 AM, when I went in the room of Kashish, I found that door was locked from inside, on which I called Kashish and made phone call, but receiving no reply, I had feared and I had broken the door and saw inside, Kashish was hanging with the fan in the room with the help of Chunni, and I took her down and took her to Government Hospital, Sector 16, Chandigarh,



where doctor declared her dead. When I returned back to home, I saw some papers lying under the pillow of bed of my daughter, which was suicide note written by my daughter, which has been handed over by me to the police. I have also given the said pages of Islamic Kalmas to the police. The reason of committing suicide by my daughter is due to encouraging by Anus and Ashmita. Now they be punished strictly. Complainant Rakesh Kumar M.No.9915858114, Dated 23.07.2003. Police action-Sir Ji, SSH Sahab Jai Hind. It is prayed to your goodself that today I, L/SI received a telephonic information that you reach at PS-39, Chandigarh. On this information, I, SI reached PS-39 Chandigarh, where I, L/SI met the Complainant Rakesh Kumar son of Ajit Ram, resident of 2427 Sector 40C, Chandigarh, who produced a written application to me L/SI. I, L/SI orally verified the facts from complainant Rakesh Kumar. From the application of the complainant, finding offence under Sections 376(2) (N), 306, 34 IPC, 4, 6 POCSO Act, after registering the same in Police Station, after taking original writing and copy of FIR, I, L/SI alongwith SI Jagtar Singh 1491/CHG and L/C Monu 4460/CP proceed to UT Area for conducting investigation. Sd/ Partibha Kumar SI PS-39 Chd. Dt. 24.07.23 from PS-39, Chd. Copies of FIR will be sent to the concerned officers. Parties can avail the facility of free legal aid.”

3. Learned counsel for the petitioner has argued that the petitioner was arrested on 24.07.2023. Learned counsel for the petitioner has further argued that the petitioner has been falsely implicated into the FIR in question. Learned counsel has further argued that the prime prosecution witness namely father of the victim/complainant, when examined as PW4, has turned hostile and hence the trial is not likely to conclude into conviction. Learned counsel for the petitioner has further argued that the prime prosecution witness namely the father of the victim/complainant



(when examined as PW4) has turned hostile in his examination-in-chief and his cross-examination being repeatedly deferred at the instance of the prosecution since CFSL reports are being awaited. In this view of the matter, learned counsel has prayed for grant of regular bail.

4. Reply by way of affidavit of Sh. Mridul, SP City, U.T. Chandigarh filed in the Court today, relevant whereof reads as under :-

“5. That three mobile phones of the deceased and one mobile phone of the Petitioner which were taken into possession were sent to CFSL Hyderabad on 13.10.2023 for retrieving of data, however, the report of the CFSL is still awaited. The reminder was sent to CFSL, Hyderabad on 18.04.2024 but no response was received from CFSL Hyderabad. Furthermore, the Hotel register and signature of accused was sent to CFSL Chandigarh on 05.06.2024, the report of which is still awaited. As such, the cross examination of the complainant could not be completed in the absence of CFSL reports. That further cross-examination of the complainant is only possible after the examination reports are received from CFSL, Hyderabad and Chandigarh.”

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 18.07.2024 in Court, which is taken on record. Learned State counsel submits that all due diligent efforts are being made by the prosecution to conclude the requisite cross-examination at the earliest and thus no fault can, in this regard, be fastened upon the prosecution.

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



6. The petitioner was arrested on 24.07.2023 whereinafter investigation was carried out and challan stands presented on 21.09.2023. Total 22 prosecution witnesses have been cited and culmination of the trial will take its own time. The rival contention of learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question as also the veracity/weightage required to be attached to the examination of the father of the victim/complainant (who has turned hostile, in so far as the Examination-in-Chief is concerned; when examined as PW4) 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. It is further not in dispute that one of the reasons for trial not being concluded expeditiously is the inability of the public prosecutor (before the trial Court) to cross-examine the father of the victim/complainant due to lack of availability of CFSL report.

It will be apposite to refer herein to a judgment of the Hon'ble Supreme Court in 'Javed Gulam Nabi Shaikh versus State of Maharashtra and another' in Criminal Appeal No. 2787 of 2024, relevant whereof reads 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.”

Therefore, it is clear from the facts and circumstances of the instant case that the trial is not being delayed, on any account whatsoever, by any endeavour made on part of the petitioner/accused. 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 18.07.2024 filed by learned State counsel, the petitioner has suffered incarceration for 11 months and 25 days & 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.

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

18.07.2024
P.Singh

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