

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

CRM-M-29434-2023

Date of decision: 18.04.2024

SHIVA

....Petitioner

V/s

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr.M.S. Dua, Advocate,
for the petitioner. (Through V.C.)

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.50 dated 25.05.2017 registered for the offences punishable under Sections 363, 366-A, 376 of IPC and Sections 3 and 4 of the Prevention of Children from Sexual Offences Act, 2012, at Police Station City-II, Abohar, District Fazilka.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“Statement of Kajal Daughter of Madan Lal caste Balmiki resident of street no. 11/12 Thakur Abadi aged near about 17 years, Abohar stated that I am resident of above said address, we are five sisters and brothers, My two sisters, one brother are elder and one is younger to me, I have been read up to Matric in Sunbeem Public High School, Abohar. My Date of Birth is 24/9/1999. Mani son of Subhash resident of Sant Nagar, Abohar

had been visiting our house, who have our mobile no. 99154-39799, who gave our mobile number to Shiva son of Pali Ram caste Balmiki resident of Street no.3 Sant Nagar, Abohar. Shiva contacted me through his mobile no. 79736-033773 and said that I love you. Then Shiva gave me mobile alongwith sim 91159-65466. On dated 22/5/2017 Day Monday, at about 10 AM in the morning Shiva asked me to come outside from my house through his mobile no. 79736- 033773 on my mobile no. 91159-65466. Shiva and one another young person to whom Shiva addressing as Mama or I can identify him if he come forward, came on Black Scooty who on the pretext of solemnizing marriage took away me along with them from kilian wali road in village but I don't know the name of village where they took me an abandoned room (Nohra) where Shiva forcibly raped me without my consent and on 23.05.2017, Tuesday near about 7 PM he left me at Shiv Mandir, Gaushala road, Abohar thereafter I reached home but I did not disclosed any incident to my parents because I scared and condescending but on 24.05.2017 I disclosed entire incident to my mother today I alongwith my mother Geeta wife of Madan Lal and my elder brother Pawandeep was came to Police Station for informing, you met us near Railway Phatak, Thakur Abadi. The entire incident disclosed to you. Shiva with the help of Mani and unknown Mama committed rape with me without my consent; legal action may kindly be taken against them. The statement is to be recorded, heard it and found it to be correct Sd/- Kajal in English above said with Geeta wife of Madan resident of street no. 11/12 Thakur Abadi, Abohar RTI Thumb Impression Verified Rajbir Kaur SI/9BRT P.S City-2 ABH Date:- 25/5/2017.”

3. Learned counsel for the petitioner has argued that the petitioner was arrested on 16.11.2021. Learned counsel for the petitioner has further argued that there was consensual relationship between the petitioner and the victim which was not to the liking of the family of the

victim and hence the petitioner has been falsely roped into the FIR in question. Thus, regular bail is prayed for.

4. Learned counsel for the State has opposed the present petition by arguing that the allegations raised are serious in nature and, thus, the petitioner does not deserve the concession of 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 16.11.2021 whereinafter investigation was carried out & challan was presented on 10.02.2022. Total 29 prosecution witnesses have been cited out of which 10 witnesses have been examined completely, 02 witnesses stand partly examined. Vide order dated 29.02.2024, the trial Court was directed to send a report to this Court regarding the progress of the trial. As per the report dated 06.03.2024 sent by the trial Court, it transpires that some documents have been misplaced and the process of reconstruction of such documents is going on. Thus, culmination of the trial will take its own time. The rival contentions of the learned counsel for the parties; regarding the factum of there being consensual relationship between the petitioner and the victim as also as to whether the petitioner was 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 remaining prosecution evidence. As per the

custody certificate dated 17.04.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 02 years and 05 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 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 learned 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/Illaqa 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

April 18, 2024
poonam

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No