



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

214

**CRM-M No.29673 of 2024 (O & M)
Date of decision : 01.10.2024**

Chander Shekhar**Petitioner**

Versus

State of Haryana**Respondent**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sumit Bhardwaj, Advocate and
Mr. Praduman Krishan, Advocate, for the petitioner

Ms. Priyanka Sadar, AAG, Haryana

SUMEET GOEL, J. (ORAL)

1. Present second petition has been filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No.38 dated 3.5.2023, under Sections 4 of POCSO Act, 2012 and Sections 354-A, 363, 366-A, 384 and 506 of the IPC (Sections 354-A and 365 of IPC deleted later on), registered at Police Station Women, Ambala.

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

‘Application No. 134- Local dated 03.05.2023. Statement of Sunita Goswami resident of Sector 10, HUDA, Ambala has been received in the police Station. Copy of the application are that, To the Women Police Station, P.S. Ambala City. Subject: Application regarding enticing my minor daughter and thereafter raped her and by capturing her nude photos/video for blackmailing and demanding rupees in crores. Sir, it is humbly requested that I, Sunita Goswami permanent of resident of Sector 10, HUDA Ambala and I am working as Treasurer Officer in Ambala. My



daughter pari is 14 years old. 1. That I was not having good health and not able to work properly. Due to this reason, in the month of March 2022, one driver namely Chander Shekhar was deputed for her by the Government. After some time, the he mixed-up with her family and he was doing his work properly. One day, the he inappropriately touched her. The complainant ignored his act. Thereafter, in the month of January 2023, some of the activities of the he were not taken in good sense by her. So, she scolded him. For this, he apologized from the complainant and assured that such mistakes will not be repeated. In the last week of March, the he came to drop the complainant at her house. At that time, the he asked the complainant that as to how she is spending time alone and that she needs some partner and the he also told her that no partner better than him will be available for her. She scolded the he for this talk. Thereafter, the complainant remained busy in her office work. The prosecutrix was alone at her house. He took advantage of young age of her daughter. In the night of 31.03.2023, the he took the prosecutrix with him. Since on 31.03.2023, the complainant came back to her house late from her duty, so she thought that her daughter is in another room. So, she slept. In the night, when the complainant woke up, she found that the prosecutrix was not present in her room. The prosecutrix came back to house in the next morning. The complainant asked the prosecutrix as to where she was in the night. On which the prosecutrix replied that she had gone to the house of her friend. After 31.03.2023, the prosecutrix was looking frightened and she was neither taking food properly nor talking with anyone. When the complainant pressurized the prosecutrix then she disclosed her that on 31.03.2023, the he enticed her and took her with him. He committed wrong act upon her. Because of fear, she did not tell anything. After coming to know about this, the complainant went to the house but he was not present there and his family members told the complainant that the he has gone to Delhi. After a few days, the he made a telephone call to the complainant through WhatsApp and threatened her that he is having nude photographs and videos of the prosecutrix. In case the complainant wants to take the same, she will have to pay Rs.12 lacs to him, otherwise he will defame the prosecutrix. Under this fear, she gave Rs. 2 lacs to him but he did not return the above said photographs and videos of the prosecutrix. He also asked the complainant to transfer her house situated in Sector-10 in his name He further threatened to kill the complainant and the



prosecutrix. With these allegations the Instant FIR was registered and only then he will return the above said photographs and videos. The complainant told him that there is some loan on the above said house, so she cannot transfer the said house in his name against him and said to him that I will file a complaint to the police against you if you did not return the photos or videos of my daughter. He said to that there is my gang in Rangian Mandi and tried to file a complaint against me then I will kill you and your daughter. That when my driver threatened to kill me and my daughter, so I become scared due to which, I filed a complaint before your office. I have full faith on you that strict legal action will be taken by you. I shall be highly thankful to you. Thanking you, dated 3.5.23, Sd/ Sunita Goswami applicant, Sunita Goswami r/o Sector 10, HUDA, Ambala Mobile No. 9896070432.'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 12.5.2023. Learned counsel has further argued that the petitioner has been falsely implicated into the FIR in question as there was a relationship between the petitioner and the mother of the victim, which turned sour later on. Learned counsel for the petitioner (during cross-examination of the mother of the victim/complainant) has cross-examined her on account of this aspect specifically and has referred to audio recording and photographs to substantiate his defence & there is no culpable evidence available against the petitioner for establishing his guilt. Learned counsel has further argued that all the private prosecution witnesses stand examined. Thus, regular bail is prayed for.

4. Learned State counsel 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 the regular bail. Learned State counsel seeks to place on record custody certificate dated 30.7.2024



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.

The instant bail petition is the second regular bail petition preferred by the petitioner. On 25.1.2024, the first bail petition preferred by the petitioner was withdrawn, wherein the following order was passed:

'Learned counsel for the petitioner, after arguing for some time, wishes to withdraw the instant petition at this stage.

Dismissed as withdrawn at this stage.'

6. It would be apposite to refer herein to various zimni orders passed by the trial Court including zimni orders passed on 22.2.2024, 18.4.2024, 17.5.2024 and 5.7.2024 to take note of the fact that the trial is not proceeding at the desired pace and fault thereof cannot be fastened upon the petitioner in any manner whatsoever. In this regard, the Hon'ble Supreme Court in ***Criminal Appeal No.2787 of 2024*** titled as ***Javed Gulam Nabi Shaikh vs. State of Maharashtra and another***, decided on 03.07.2024; has held, 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.”

7. Keeping in view the entirety of the facts and circumstances of the case, especially the pace of trial, which is being undertaken at the instant of the prosecution, this Court is inclined to consider the instant bail petition (second regular bail petition) filed by the petitioner.

8. The petitioner was arrested on 12.5.2023 whereinafter investigation was carried out and challan stands presented on 18.7.2023. Total 18 prosecution witnesses have been cited, out of which 12 have been examined till date. It is not in dispute that all private prosecution witnesses and mother of the victim stand examined. 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 weightage/veracity required to be attached to the photographs/audio recording put up by the petitioner explaining his defence; 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 material 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 30.7.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of more than one year and two 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.

9. 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/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

10. 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.

11. Ordered accordingly.

12. Nothing said hereinabove shall be construed as an expression of

2024:PHHC:130380



CRM-M No.29673 of 2024 (O & M)

-7-

opinion on the merits of the case.

13. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

01.10.2024
Ashwani

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