



CRM-M-29434-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29434-2024 (O&M)

Date of Decision: 09.09.2024

HASAMDEEN

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. D.S. Matya, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

Mr. Mazlish Khan, 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.0264 dated 23.11.2019, registered for the offences punishable under Sections 323, 342, 498-A, 328, 506 and 34 of IPC, 1860 (During investigation Section 328 deleted and added on charge) at Police Station Nagina, District Nuh.

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

*“To, The SHO, Police Station Nagina, District Nuh,
Subject:- an application to initiate legal action against Hasam son of Kallu, Irfan son of Kallu, Kallu son of Atar Khan, Jubeda wife of Kallu, Arsheeda daughter of Kallu, Rubina wife of Hasam all aforesaid are resident member of Village Gwalda, Police Station Chopanki, District Alwar, Rajasthan. Aforesaid given beatings and administered poison forcefully to the complainant and after doing this left the victim at Bhadas Karhera road near factory in Respected sir, it is requested that applicant Tahira daughter of Nasruddin resident member of Village Karhera, Police Station Nagina, District Nuh, married with Hasam son of Kallu resident member of Village Gwalda*

**CRM-M-29434-2024 (O&M)**

on dated 21.05.2011. In the aforesaid marriage father of applicant gave one Farmtrack-60 and 101000 rupees in cash and also gave jewelry (gold and silver) of rupees 2 and treated entire barat very well and spend around 3 lakh rupees in the service of barat. Husband and family members of husband of applicant were not happy with the dowry given by the farther of complainant and started harassing the applicant from the very outset of marriage and started pressurizing my father for money and I gave birth to baby boy 5 years back and aforesaid demanded Apache bike in Chhuchak of my son but my father gave splendor bike due to scarcity of money. Aforesaid were not satisfied with the bike and started harassing me and few times my father came to my matrimonial house with respectable members of village and tried to convince aforesaid to treat complainant well. Around 1 month before my husband Hasam solemnized second marriage with a girl namely Rubina and further aforesaid accused started ill treating with me so that I can leave the matrimonial house. On dated 19/11/2019 aforesaid accused beaten me after connivance with each other and Arsheeda drag me on the earth after pulling my hairs and my mother in law sat on my body and started giving fist blow on my body and Arseeda take out a stick and gave me injuries on different parts and my father in law namely Kallu was saying again and again kill her after hanging so that we can get rid from her. My husband Hasam and his second wife Rubina encircled rope in my neck and started pulling the rope and I raised alarm save me-2 (Bachao-Bachao) then my brother in law namely Irfan said do not kill her here and we would be implicated in case then aforesaid accused left me and kept me in a room and gave nothing to me and my two children for survival and at around 3:00 PM my husband Hasam said you are suffering from pain and need to go with me for medicines then my husband Hasam, my brother in law namely Irfan and my brother in law (Nanddev) namely Khalid took away me and my two children one baby girl and second baby boy in a car via Tauru Ghati and then took Delhi Alwar road and stopped car after reaching at Bhadas then Irfan and Khalid said we are offering Pepsi to you then they brought Pepsi which was opened and handed over to me then said drink it. When I started drinking Pepsi then I realized it producing different type of smell and further I refused to drink it and proceeded towards my village Karhera and my health started deteriorating after crossing Karheri village and started vomiting and accused left me and my two children at Bhadas Karhera road near crasser factory and my co- villagers were working in the fields and they identified me as daughter of Haji Nasruddin and Rukdeen son of Naseer Khan informed my father and my father reached the place and took me to hospital on a car and I was unconscious and I became conscious on dated 20.11.2019 and I was admitted in Nalhar Medical hospital and I informed about the aforesaid incident to my father and I came tom

**CRM-M-29434-2024 (O&M)**

Police Station with my father for taking legal action against the accused. Thus it is requested that strict legal action be initiated against the aforesaid accused. Sd/- Tahira daughter of Nasruddin resident of Village Karhera Police Station Nagina-9812124156.”

3. Learned counsel for the petitioner has argued that the petitioner was initially taken into custody on 23.08.2020 and was granted bail on the same date i.e. 23.08.2020 since the offences invoked against the petitioner at that time were under Sections 323/342/498-A/506 of IPC. Learned counsel for the petitioner has submitted that thereafter the learned trial Court had framed charges against the petitioner as also co-accused on 24.05.2024 which included charges under Section 328 of IPC as well & hence the petitioner was taken into custody on this count. Learned counsel for the petitioner has further submitted that the offence of Section 328 of IPC is not made out against the petitioner in the factual matrix of the case. Learned counsel for the petitioner has further submitted that earlier there was an opinion rendered by the ADA (Assistant District Attorney) on 09.04.2021 which reflected that no offence under Section 328 of IPC is made out against the petitioner. Thus, the regular bail is prayed for.

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. Learned counsel for the complainant has vehemently opposed the grant of regular bail on the ground that the allegations made against the petitioner are serious in nature & hence he ought not to be granted the concession of regular bail. Learned counsel for the complainant has submitted that repeated requests were made by the complainant-side to

**CRM-M-29434-2024 (O&M)**

not done & hence the petitioner was not challaned for offence under Section 328 of IPC at earlier. Learned counsel for the complainant has further submitted that the MLR as also FSL brought on record clearly indicate the complicity of the petitioner in the offence under Section 328 of IPC as well.

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

7. The petitioner was initially arrested on 23.08.2020 and was released on bail on the same date. Thereafter, the petitioner has been taken into custody on 24.05.2024 primarily on account of offence under Section 328 of IPC having been invoked against the petitioner by the learned trial Court at the time of framing of charges. It is not in dispute that the petitioner has not misused the concession of regular bail earlier extended to him from 28.03.2020 till 24.05.2024. The rival contention of the learned counsel for the parties; as to whether the offence of Section 328 of IPC is made out against the petitioner or not; 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 the custody certificate dated 06.09.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 03 months and 13 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 present case.

8. In view of totality of factual matrix of the present case, the instant petition is allowed. Petitioner is ordered to be released on regular

**CRM-M-29434-2024 (O&M)**

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.

9. 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.

CRM-M-29434-2024 (O&M)

11. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

09.09.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No