

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CRM-M-31647 of 2023
DATE OF DECISION :- 05.04.2024

Edu Malik

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Parminder Singh, Advocate
for Mr. Ritesh Tomar, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

Mr. Vipul Sharma, Advocate for 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.0031 dated 31.01.2023, registered for the offences punishable under Sections 363,366 of IPC susequently added Sections 406,354A,506,376(2N),120B,419,420 of IPC and Section 6 of POCSO Act at Police Station Adarsh Nagar, Ballabgarh, District Faridabad.

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 SHO, Police Station Adrash Nagar, Faridabad. Sir, it is requested that I Virender S/o Chet Ram is R/o Adrash Nagar Ballabhgarh, I have four children out of which three daughters and one son. My elder daughter name Isha who is 18 years old. Today, Isha made a cup of tea for her mother. When my wife was having tea on the first floor while folding clothes then Isha left the home without telling to anyone. That my daughter wore a lower and a T shirt and slippers in the feet. that description of my

daughter wheat colour, round face, a mole on her left cheek, height 4 feet 9 inch, age 18 years and studying in 12th class. That she took away 3 gold chains, 2 gold sets, 4 gold rings, 1 tikka. I have doubt that my daughter has been eloped by some unknown boy with intension to marry her. My report be registered and my daughter be traced.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 31.01.2023. Learned counsel has further referred, in extenso to the statement made by the victim under Section 164 of Cr.P.C on 13.02.2023 to say that the victim had initially not made any allegation of assault against the present petitioner and it is only upon coercion by her family that she made a statement against the present petitioner when examined as a prosecution witness. Learned counsel for the petitioner has further argued that there was a consensual friendship between the petitioner and the victim which factum is clearly decipherable from their having filed a protection petition before this Court vide CRWP No. 1047 of 2023. In this view of the matter, learned counsel has prayed for grant of regular bail.

4. Learned State counsel has filed reply by way of affidavit of Sh. Vinod Kumar, HPS, Assistant Commissioner of Police, Ballabgarh, District Faridabad in the Court today. The same be taken on record. A copy thereof has been supplied to learned counsel for the petitioner as also to learned counsel for the complainant. 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 has filed the custody certificate dated 04.04.2024 in the Court today, which is taken on record.

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

6. The petitioner was arrested on 31.01.2023 whereinafter investigation was carried out and challan stands presented on 19.04.2022. Total 28 prosecution witnesses have been cited and culmination of the trial will take its own time. The testimony of the victim already stand recorded as PW1. The rival contentions of the learned counsel for the parties; as to whether there was a consensual friendship between the petitioner and the victim which was not to the liking of the family of the victim, the weightage required to be attached to the statement made by the victim under Section 164 of Cr.P.C on 13.02.2023 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. The petitioner is a young man aged 21 years of age at present with no criminal antecedents. As per custody certificate dated 04.04.2024 filed by learned State counsel, the petitioner has suffered incarceration for a period of more than 01 year and 01 month & 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 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

05.04.2024
P.Singh

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