

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
CRM-M-32253-2023
Date of decision: 14th February, 2024

Kaki @ Didar Masih

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. M.S. Dua, Advocate for the petitioner.
Mr. Satjot Singh, A.A.G., Punjab.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 439 of Cr.P.C.
seeking regular bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
84	06.05.2022	Sadar Fazilka, District Fazilka	450, 376, 511, 323 of Indian Penal Code, 1860 and 8 POCSO Act, 2012

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement of complainant ‘G’ (name withheld) alleging therein that she belonged to village Rana but was staying at Hanumangarh alongwith her children to do labour work. On 30.04.2022, her children including the victim who is her daughter aged 14 years had gone to village Rana, whereas she herself was in the house of her sister at Hanumangarh. On the same night, the petitioner- Kakki Masih and co-accused went to her house, they took her daughter in the room of their house where petitioner tried to commit rape upon her. On

raising alarm by her daughter, they had run away. Her daughter disclosed about the occurrence to her through phone on the next day. She had gone to her village. The FIR was registered on 06.05.2022. Investigation proceedings were initiated. The present petitioner was arrested on 31.01.2023.

3. It is submitted in the petition and learned counsel for the petitioner vehemently argued that the petitioner has been falsely implicated in this case. Infact, the complainant and her daughter had taken an amount of ₹ 60,000/- as loan from the co-accused on 27.03.2022. Due to not returning of the said loan amount, the co-accused had filed a complaint against them under Section 138 of Negotiable Instruments Act, 1881 in the year 2022 and the present case was a counter blast to the same. The petitioner is brother-in-law of the co-accused. The houses of the complainant and petitioner are in a thickly populated area, wherein as many as 250-300, others houses are existing and it cannot be assumed that any attempt to commit rape upon the daughter of the complainant could be made in such area. The petitioner is in custody for a period of more than one year. Trial is likely to take time. No useful purpose would be served by keeping him in custody. Hence the petition deserves to be allowed.

4. *Per contra*, learned State counsel has argued that there are serious allegations against the petitioner and therefore, he does not deserve to be given concession of bail.

5. I have heard leaned counsel for the parties and have gone through record.

6. As per the allegations, the petitioner alongwith the co-accused Swarna Rani who is his sister-in-law (*bhabhi*) had trespassed in the house of complainant wherein he made an attempt to commit rape upon her daughter. The investigation has since been completed. Challan has been presented. Charges have been framed. Trial is likely to take time. The petitioner has placed on record copies of some compromise stated to have been arrived at between the complainant and himself as well as an affidavit shown to be sworn by the mother of the victim in this point. Though, no consideration can be given to these documents at this stage. However, still keeping in view the nature of the allegations that have been levelled against the petitioner, the period spent by him in custody, on the ground of parity and the entire facts of the circumstances, in my opinion, the petitioner deserves to be extended benefit of bail at this stage.

7. Hence, the petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

8. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

9. Since the main petition has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

14th February, 2024

Parveen Sharma	1. Whether speaking/ reasoned	:	Yes / No
	2. Whether reportable	:	Yes / No