

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

226

CRM-M No.32160 of 2024 (O & M)

Date of decision : 13.8.2024

Shivam @ Shiva

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Ankur Lal, Advocate, for the petitioner
Ms. Priyanka Sadar, AAG, Haryana

SUMEET GOEL, J. (ORAL)

The instant petition has been filed on 5.7.2024 under Section 439 Cr.P.C. for grant of regular bail.

As per the judgment rendered by this Court titled as '*Abhishek Jain v. State of U.T. Chandigarh and another*' (CRM-M No.31808 of 2024, 2024:PHHC:085784), the instant petition is not maintainable under Section 439 Cr.P.C., 1973. However, keeping in view the entirety of facts and circumstances of the case especially that the instant petition pertains to regular bail, the instant petition is directed to be considered as a petition under Section 483 of BNSS, 2023.

1. Present petition has been filed by the petitioner for grant of regular bail in case FIR No.12 dated 8.1.2024, under Sections 365 IPC and Section 4 of POCSO Act, registered at Police Station Saran, 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 S.H.O, Police Station Saran, Faridabad, Sir, It is requested that I am Ruchi Panchal W/o Amit Kumar R/o House No. 2876, Street no. 5, Jawahar Colony, Faridabad. I have Three Children (Two Boys & One Girl). That my daughter XXX Panchal aged about 17 years old. On dated 07.01.2024 at about 09:00 PM she went away on her own free will, without informing. She wears black colour woollen inner and white colour JACKET, on top of it and she wears blue colour slippers on her feet. Her appearance is of fare complexion, long face, slim body, height was 5 feet 4 inches, and age about 17 years old. Till now I have been searching on my own. I did not found my daughter. I have suspect that my daughter has taken away by a boy named Shivam @ shiva by seducing her. A search should be conducted for my daughter and Action should be taken. Sd-/ Applicant (Ruchi Panchal W/o Amit Kumar)'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 25.1.2024. Learned counsel has further argued that a perusal of the statement made by the victim before the Police under Section 161 Cr.P.C., the statement made by her before the Child Welfare Committee and also the statement made by the victim under Section 164 Cr.P.C. before the Magistrate on 16.1.2024 clearly reflects that there is no incriminating material available against the petitioner and the victim had left the lawful custody of her parents on her own accord. 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 11.7.2024 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.

6. The petitioner was arrested on 25.1.2024 wherein after investigation was carried out and challan stands presented on 23.4.2024. Total 23 prosecution witnesses have been cited and culmination of the trial will, but of course, take its own time. The rival contention of learned counsel for the parties; regarding the weightage required to be attached to the statements made by the victim before the police under Section 161 Cr.P.C., statement made before the Child Welfare Committee and also the statement made before the Magistrate under Section 164 Cr.P.C.; 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.

7. The first bail petition preferred by the petitioner before this Court was dismissed as withdrawn vide order dated 30.5.2024, which reads as follows:

1. *Learned counsel for the petitioner seeks to withdraw the present petition with liberty to file afresh after giving complete particulars qua the antecedents oof the petitioner.*
2. *Dismissed as withdrawn with liberty aforesaid.*
3. *Pending application(s), if any, shall also stand disposed off.*

Accordingly, since the first petition preferred by the petitioner was withdrawn with liberty to file afresh after giving complete particulars qua the antecedents of the petitioner, this Court does not find any impediment in considering the present (second) regular bail petition of the accused.

8. Nothing perceptible has been brought forward to indicate the



likelihood of the petitioner interfering with the prosecution evidence. As per custody certificate dated 11.7.2024 filed by learned State counsel, the petitioner is stated to be in custody for about 5 months and 17 days. This custody certificate is dated 11.7.2024 and thus, it can be well presumed that the petitioner has suffered incarceration for another month thereafter. Accordingly, it is indubitable that the petitioner has suffered incarceration for about 6 months and 17 days as on date i.e. 13.8.2024. As per the said custody certificate, the petitioner is stated to be involved in another FIR No.225 dated 13.9.2021 under Sections 6 of POCSO Act and Section 506 IPC, registered at Police Station Women, NIT, Faridabad, but the petitioner is on bail in the said case. The factum of the petitioner being involved in another case cannot be, by itself, be construed as sufficient to decline the concession of regular bail to the petitioner in the instant case.

Suffice to say, further detention of the appellant 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 opinion on the merits of the case.

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

(SUMEET GOEL)
JUDGE

13.8.2024
Ashwani

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