



CRM-M-33244-2024 (O&M)

213-A

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33244-2024 (O&M)

Date of Decision: 23.09.2024

Satish

.. Petitioner

Vs.

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Abhinav Gupta, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

Mr. Shivam Verma, Advocate for
Mr. Lakshay Goel, Advocate for the complainant.

...

SUMEET GOEL, J. (Oral)

1. The instant petition has been filed on 09.07.2024 under Section 439 of Cr.P.C., 1973 for grant of regular bail.

As per the judgment rendered by this Court titled '*Abhishek Jain Vs. State of U.T. Chandigarh and another*' (CRM-M-31808-2024) **2024PHHC085784**, the instant petition is not maintainable under Section 439 of 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 Bharatiya Nagarik Suraksha Sanhita, 2023.

Present petition has been filed for grant of regular bail to the petitioner in case bearing FIR No.394 dated 07.09.2020, registered for the offences punishable under Section 4 of POCSO Act, at Police Station Khol,

District Rewari.

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

“First Information contents: Sir, It is requested that I Sanjay Kumar son of Shri Jaipal, caste Rajput, am resident of village Kundal. Today at around 7.15 PM, I was present at my house. My youngest daughter Sunidhi aged about 10 years while playing has gone to the house of my neighbour Satish son of Ram Singh caste Rajput. After some time my daughter Sunidhi came back home while crying and informed me by touching her private part with her hands about the bad act done with her, whereupon my wife Sudesh took her into the room and when my wife has checked by removing her cloth then there was some blood on it. On the said signal of my daughter, my wife, while shouting, went to the house of Satish and after understanding about the entire incident, I had given information at Police Post Kund, whereupon the police came and written complaint has been given to the police. Appropriate legal action be taken against the accused. I have verified about it, Satish has committed rape upon her. My daughter is abnormal, she is dumb. The girl has pointed on Satish in the presence of mother of Sarpanch, therefore FIR be registered and strict legal action be taken. At that time, Satish was under the instance of liquor.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 07.09.2020. Learned counsel for the petitioner has submitted that total 22 prosecution witnesses were cited and all have been examined. Learned counsel for the petitioner has further submitted that father of the victim, mother of the victim as also grand-mother of the victim have turned hostile when examined as prosecution witnesses. Learned counsel for the petitioner has further submitted that the statement of the victim was recorded as a prosecution witness before the trial Court but no cross-examination has been allowed to be undertaken. Learned counsel for the petitioner has further submitted that an application under Section 311 of Cr.P.C. was filed by the trial Court which was declined & a petition (CRM-M-20612-2024) has been preferred before this Court which is pending adjudication. Thus, regular bail is prayed for.

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

6. The petitioner was arrested on 07.09.2020 whereinafter investigation was carried out & challan was presented on 08.10.2020. Total 22 prosecution witnesses have been cited and all of them stand examined. The rival contention of the learned counsel for the parties; the question as to whether the testimony of the victim can be read against the petitioner without an opportunity of cross-examination having been afforded; shall be gone into during the course of trial or any other appropriate proceedings. 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 remaining prosecution evidence. As per the custody certificate dated 19.09.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 04 years & 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.

7. In view of totality of factual matrix of the present case, the instant 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

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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/Illaqa 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



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11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

23.09.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No