

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-35213-2023

Date of decision:20.03.2024

Balihar @ Balkar

....Petitioner

V/s

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Lakhwinder S. Sidhu, Advocate for the petitioner.
Ms. Ankita Ahuja, AAG Haryana.
Mr. Yash Goyal, Advocate
for the complainant/respondent No2.

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.196 dated 09.12.2022, registered for the offences punishable under Sections 376, 450, 506 of IPC at Police Station Jakhal, District Fatehabad.

2. The case set up in the FIR in question is as follows:-

“Statement of Santosh wife of Ramesh Kumar son of Jagdish Singh, resident of Master Colony, Jakhal, aged 36 years, mobile No. 72065-15743, Stated that I am resident of aforesaid address and I am a household lady. I have studied upto Class 5th and I know reading and writing in Hindi. Balihar alias Balkar son of Bhagwant Singh, resident of Kalian, Punjab and I, we both remained in a relationship for long. However, during May 2022 got registered FIR No. 89, dated 04.05.2022, under Sections 376 N, 406, 506, 34, 452 IPC against Balihar Singh at Police Station Jakhal. Thereafter, I appeared before the Hon'ble Court and made a statement that I and Balihar are in relationship. Because of this reason, the police cancelled the said FIR. At that time my husband had said that Balihar should not come to our house. Thereafter, there remained no connection/relationship of mine and Balihar. Yesterday, on dated 08.12.2022, at about 11:30 am, I was alone at my house. Balihar

came outside my house and he demanded bag from me. I said to him that at this time my husband is not at home, you should take away your bag after he comes back. However, the accused Balihar held me by my hand and forcibly took me to inside the house and he bolted the door from inside. He tried to convince me but I did not fall to his talks. Thereafter, he forcibly committed rape upon me. He threatened to kill me if I would dare to inform anybody about this incident and thereafter he left the spot. I was in a state of shock due to what was done by Balihar alias Balkar. Because of this reason, I could not get my statement recorded with the police yesterday. Today, I have gathered the courage and contacted the police. I request you that legal action may be taken against Balihar alias Balkar. Now I have got recorded my statement with you, the same has been read out to me and is correct. Sd/- Santosh. The above statement stated and recorded in the presence of me. Sd/- Lajwanti Kataria, Advocate, Civil Court, Tohana, Mobile No. 94161-20867.”

3. Learned counsel for the petitioner has argued that the petitioner was arrested on 27.12.2022 and investigation in the case is already complete. Learned counsel has further argued that there was consensual relationship between the petitioner and the victim which turned sour later on and the FIR in question is result thereof. It has been further argued that the victim is not intentionally coming forward to have her testimony recorded as prosecution witness which factum is clearly decipherable from the orders passed by trial Court on 04.07.2023, 07.08.2023, 13.10.2023, 03.11.2023, 08.12.2023, 12.01.2024 & 12.03.2024. In this view of the matter, learned counsel has prayed for grant of regular bail.

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. Learned State counsel seeks to place on record custody certificate dated 22.02.2024 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 27.12.2022 whereinafter investigation was carried out and challan was presented on 23.05.2023. Total 19 prosecution witnesses have been cited and culmination of the trial will take its own time. The rival contention of learned counsel for the parties; as to whether there was consensual relationship between the petitioner and the victim; 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 remaining prosecution evidence. As per custody certificate dated 22.02.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of more than 01 year and 01 month.

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

March 20, 2024
Ajay

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