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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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DATE OF DECISION :- 23.07.2024

Pardeep Sharma **...Petitioner**

Versus

State of Haryana **...Respondent**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Abhibav Sood, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

SUMEET GOEL, J. (Oral)

The instant petition has been filed on 15.07.2024 under Section 439 of Cr.P.C, 1973 for grant of regular bail.

As per the judgment rendered by this Court titled '*Abhishek Jain Versus State of U.T. Chandigarh and another*' (CRM-M-31808 of 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 BNSS, 2023.

1. Present petition has been filed for grant of regular bail to the petitioner in case bearing FIR No.0478 dated 23.11.2023, registered for the offences punishable under Sections 365, 363,366-A of IPC and Section 6 and 17 of POCSO Act at Police Station Faridabad Central, District Faridabad.

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

“FIR No. 0478 dated 23.11.2023 under Section 365 IPC, 1860 and subsequently Sections 363, 366-A IPC, 1860 and Sections 6 and 17 of POCSO Act, 2012 were added later on registered at Police Station Faridabad Central. District Faridabad.

"To Sh. Chowki Incharge Sector 15 (A) Faridabad. Sir, it is requested that I Sita Saran Saha son of Shri Ram Ji Shah is resident of Post Barhi Jeela Madhubani Police Station Jai Nagar Bihar at present is tenant of House No. D/4 Ajronda Faridabad. That I do the work of repairing of Sewer Lines on contractual basis. That I have 5 children out of which 4 are girls, 1 is a boy. My youngest daughter whose name is Kajal and age is 16 years who has studied till 8th Standard and remains at the house since past 1 year. Today on dated 23/11/2023 time around 12.30 PM my daughter Kajal had gone to Ajronda Market for purchasing household goods who has not returned to the home till now. That we have suspicion that my daughter Kajal has been kidnapped by a person whose name and address is unknown. That the description of my Kajal is as following height around 5 foot, longish face, mark of chicken pox on the shoulder of left hand, who has worn suit of black colour and lower of black colour and have worn slippers on the feet. Therefore it is requested from your good self that after searching for my daughter Kajal, her whereabouts may be ascertained. SD-Sita Saran Saha 9650386123”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 01.12.2023. Learned counsel for the petitioner has submitted that the victim had made a statement before the police on 25.11.2023 wherein no allegation was raised against the present petitioner, thereafter the petitioner had made statement under Section 164 of Cr.P.C. before the concerned Magistrate on 26.11.2023 wherein also no allegation

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was raised against the petitioner but the victim had made another statement on 26.11.2023 before the Child Welfare Committee in which allegations of rape were levelled against the petitioner. Learned counsel for the petitioner has thus argued that the victim has repeatedly changed her stand under the influence of her father. 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 23.07.2024 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 01.12.2023 whereinafter investigation was carried out and challan stands presented on 19.01.2024. Total 27 prosecution witnesses have been cited and culmination of the trial will take its own time. The rival contention of learned counsel for the parties; regarding the weightage required to be attached to the various statements made by the victim as also the factum if the said statements are being changed/improved under the influence of the family of 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 prosecution evidence. As per custody certificate dated 23.07.2024 filed by learned State counsel, the petitioner has

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already suffered incarceration for about 7 months and 23 days. The petitioner has been shown to be involved in one more FIR pertaining to the year 2019 for offences under Sections 323,325,427,452,506,34 IPC registered at Police Station Central Faridabad, District Faridabad. The petitioner is stated to be on bail in this FIR. The fact by itself cannot be sufficient to deny the concession of regular bail in the facts and circumstances of the present 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 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/Illaq Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.



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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

23.07.2024
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No