



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

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CRM-M No.35018 of 2024 (O & M)
Date of decision : 14.8.2024

Ajay**.....Petitioner****Versus****State of Punjab****.....Respondent****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Varun Sharma, Advocate, for the petitioner

Mr. Anup Singh, AAG, Punjab

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner in case FIR No.67 dated 21.4.2022, under Sections 363, 366-A, 376 and 120-B of IPC and Section 6 of the POCSO Act, 2012, registered at Police Station Division No.5, District Jalandhar.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

"I am resident of abovementioned address and I work as a laborer. Anita Kesari my wife and my four children out of which 2 boys and 2 girls are there at my house. Out of which, eldest daughter Madhu is 19 years, daughter Rani is aged 16 years, son Shivam is 15 years of age and son Satyam is 10 years of age. I along with my wife & 4 children came and started living in Punjab at Jalandhar around 3 years back. I also started working here. One boy Ajay S/o Ishnath Prashad who is also resident of my village at Chorma Chownk, came to Punjab at Jalandhar 2 years back and started living with us. At that time he stayed for a duration of 7 days



with us and thereafter, he started living on rent at Anoop Nagar Basti Danishmanda. However, Ajay still use to come to my home whereafter, Ajay use to bring one boy who was living with him at our home, Jaggu resident of village Hazipur district Vaishali, Bihar at present resident of Anoop Nagar Basti Danishmanda. With whom also, me and my family got good acquaintance. On account of which, my children also use to go for meeting Ajay and Jaggu at their house at Anoop Nagar. On 16/4/2022 at around 1:00 PM noon, I was present at my house with my family wherein, my daughter Rani aged 16 years went from home to shop outside by making excuse for bringing some article however, she did not return even after some time. Due to this, I enquired about my daughter Rani from my acquaintance & relatives and nearby peoples but I could not gather any information about my daughter. Thereafter, I went to Anoop Nagar Danishmanda at the house of Ajay and Jaggu for enquiring about my daughter however, they were not present at the house and since, the house was locked from outside, I amply tried telephonically to have a word with them however, neither amongst them answered my call nor reverted to my calls. Even thereafter, I tried to have a word with them on phone but they have switched off their phones. I am fully assured that Ajay and Jaggu are fully involved in taking my daughter Rani. Ajay and Jaggu after hatching a conspiracy and while tricking my daughter qua marriage has taken away her somewhere. I, on my behalf was searching for my daughter who uptill this time has not been found. It is requested that appropriate action be taken against Ajay and Jaggu and my daughter be got recovered from them. I have recorded my statement with your goodself I, have heard the same is correct. SD/- Surender Kesari.'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 7.7.2023. Learned counsel has further argued that the victim had made two statements under Section 164 of Cr.P.C., the first one was made on 21.9.2024 wherein nothing inculpatory had come against the petitioner and the second one was made on 16.7.2022 wherein she had made inculpatory statement against the present petitioner. Learned counsel for the petitioner, thus, argued that the second statement made by the victim on 16.7.2022 did not reflect the truth as the same was



made under the influence of her family. Learned counsel has further argued that the victim, when examined as a prosecution witness, has turned hostile and thus, the trial is not likely to culminate into the conviction. Hence, 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 13.8.2024 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 7.7.2023 wherein after investigation was carried out and challan qua the petitioner was presented on 12.9.2023. Total 13 prosecution witnesses have been cited out of which 7 have been examined. The private prosecution witness namely, the victim has already been examined wherein she had turned hostile. The rival contention of learned counsel for the parties; regarding the weightage/veracity required to be attached to the testimony of hostile witness, 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 13.8.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of more than one



year and one month & 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 present 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/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 of opinion on the merits of the case.
11. Pending miscellaneous application(s), if any, stand disposed of accordingly.

14.8.2024
Ashwani

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No