



CRM-M-35213-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35213-2024 (O&M)

Date of Decision: 27.08.2024

SHISHPAL

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Manoj Tanwar, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

...

SUMEET GOEL, J. (Oral)

1. The instant petition has been filed on 22.07.2024 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.437 dated 23.06.2023, registered for the offences punishable under Sections 323, 376, 376-B and 506 of IPC at Police Station Sadar Thanesar, Kurukshetra.

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



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“Copy of complaint is as under: A complaint number 961 - Peshi dated 31.05.2023 after the Investigation was received from the Office of Deputy Superintendent of Police, Kurukshetra at through Post Station, which is as follows: To Mr. Superintendent of Police, District Kurukshetra. Subject: complaint against Sheeshpal son of Dariya Ram, resident of Rajaud, District Kaithal, for taking divorce by fraud and for forcibly doing wrong act in the house after divorce and for assaulting. (8607584024) Sir, the complainant requests the following:- 1. That the complainant Manju daughter of Ishwar Singh resident of Bhagwan Nagar Colony, She is a resident of Kurukshetra and is a peaceful and law-abiding woman. 2. That she was married to Pradeep Kumar (earlier husband) in 2009 and from this marriage the complainant has a son and a daughter. That the complainant's husband died on date 05.04.2016. Accused performed court marriage with Complainant on 21.09.2018. That a son, Rihan, was born to the complainant from this marriage. Accused is posted in Haryana Police, Constable, Belt No. 394. 3. That right after the marriage, the accused used to taunt the complainant in various ways and said that you He is not worthy of coming and going anywhere with me. Who will fight with me many times under the influence of alcohol used to do. When I told this to my family, the accused threatened me that your family members can nothing to me, because I am in the police. 4. That the complainant tolerated the harassment committed by the accused. She kept thinking that one day everything will be fine and she did not want to spoil her house. 5. That suddenly accused started behaving properly with complainant due to which the complainant was shocked by this sudden change in the behavior of the accused. But the complainant consoled herself by thinking that her house would now be settled properly. 6. That the accused continued to behave well with the complainant for about 3 years. but on 15.01.2023, the complainant came to know that the accused had taken a ex-parte divorce from the complainant and after hearing this the complainant got a big shock. After that, when the complainant investigated it, she came to know that the accused had cheated the complainant and obtained a one-sided divorce from her. When the complainant obtained a copy of divorce order through the lawyer, I came to know that in that case, accused had written the wrong address of the complainant and got sent the summons there. By forging the signatures, he cheated the Ld. court and got a ex-parte divorce order. Whereas the complainant has been living with the accused in Bhagwan Nagar Colony, Pipli, Kurukshetra since the year 2019. (related documents copy of the admission form Mannat and Deepashu is attached). 7. That the accused filed a divorce case with the complainant before Ld. Family Court, Kurukshetra on 09.10.2019 and the decision of which came on 09.12.2022. During this period the accused continued to live under the

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same roof with the complainant at Bhagwan Nagar Colony, Kurukshetra and during the same period, the complainant gave birth to the accused's son Rihaan on 30.07.2021, a copy of which is attached with. 8. That the complainant has filed a petition for annulment of the ex-parte in the Ld. Family Court, Kurukshetra on 17.02.2023. When accused received its summons, he abused and beat the complainant badly and all payment of maintenance has been stopped, due to which the condition of the complainant has become quite pathetic at this time. 9. That on 03.05.2023, a call from the accused came on the phone of the complainant that he is coming home. That accused came home late at night and abused the complainant while drunk and did wrongful acts against the complainant's wish, when the complainant protested against this, the accused threatened that he is in police and if she complained about this, he will kill him and no one can harm him. That due to the harassment committed by the accused, the complainant is in deep shock and is mentally disturbed. The complainant is facing constant threat of life and property from the accused. There is danger. The accused repeatedly threatens to do something to himself and expose the complainant and her family. Will get implicated in the case. Therefore, I request you to take action against the above mentioned accused keeping in mind the above facts. Strictest legal action should be taken and justice should be provided to the complainants and departmental action should be taken against the accused."

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 21.08.2023. Learned counsel for the petitioner has submitted that out of total 21 cited prosecution witnesses 5 have been examined and 4 already stand given up. Learned counsel for the petitioner has submitted that allegations of rape against the petitioner are false as divorce had already been granted between the petitioner and victim & the victim, in order to harass the petitioner, has got the FIR in question lodged against him. Learned counsel for the petitioner has further submitted that the petitioner was granted the concession of regular bail on 12.07.2023 by ld. ACJM, Kurukshetra, since, at that time, the offences invoked against the petitioner were only under Sections 323/376-B/506 of IPC. Learned counsel for the petitioner has further submitted that later on offence under

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Section 376 of IPC was added against the petitioner and thereafter he was taken into custody on 21.08.2023. Learned counsel for the petitioner has argued that from 12.07.2023 (when the petitioner was granted regular bail by Id. ACJM, Kurukshetra) and upto 21.08.2023 (when the petitioner was taken into custody) there is no allegation against the petitioner for having misused the concession of regular bail extended to him. Thus, regular bail is prayed for.

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 21.08.2023 whereinafter investigation was carried out & challan was presented on 06.11.2023. Total 21 prosecution witnesses have been cited out of which it is the conceded case of the parties that 5 stand examined and 4 already stand given up. Further, it is not in dispute that all private prosecution witnesses stand examined. The rival contention of the learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question so as to harass him; 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.

The first bail petition preferred by the petitioner was decided

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- “1. Learned counsel for the petitioner, after arguing for some time seeks to withdraw the instant petition at this stage.*
- 2. Dismissed as withdrawn at this stage.*
- 3. Pending application(s), if any, shall also stand disposed off.”*

It is indubitable that after the withdrawal of the first bail petition before this Court, the petitioner has suffered about 5 months more incarceration. Further, all the private witnesses have either been examined or given up after passing of the above said order dated 12.03.2024 by this Court. As per the custody certificate dated 24.08.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 01 year and 03 days & 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 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.



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- (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 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.

27.08.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned Yes No

Whether reportable Yes No