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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 31.07.2024

Aman Kumar

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Atul Ravish, Advocate for the petitioner.
Ms. Ankita Ahuja, AAG Haryana.

SUMEET GOEL, J. (Oral)

The instant second 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 as '*Abhishek Jain Vs. State of U.T. Chandigarh and another (CRM-M-31808-2024:2024:PHHC:085784)*', 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. The present second petition has been filed by the petitioner-*Aman Kumar* seeking regular bail in FIR No.249 dated 14.08.2021 registered under Sections 346 of IPC and Section 6 of POCSO Act, 2012 (added later on) at Police Station Industrial, Sector – 7, Manesar, District Gurugram.



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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:

“I, Ashok Kumar s/o Ramswarup Shukla r/o Village Rajpur, Distt. Kanpur Dehat, presently residing with family on rent at the house of Devender Gupta in Kasan. That yesterday, on 13.08.2021 at 06.30 PM, I had scolded my daughter Somya Shukla aged 16 years, who is studying in 11th class in Universal Public School, Ghosghar, on some household work and being annoyed with the same, she left the home without informing anyone. I have tried to trace out her at my own but failed, she is of wheat color, having round face, slim body, height around 5'4, age 16 years, she is wearing white color jeans and pink color top. My daughter is not carrying any mobile phone. I do not have any suspicion on anyone in taking away my daughter. Now I have come to police station to inform that my daughter be searched.”

3. The petitioner had earlier applied for grant of regular bail before this Court which was dismissed as withdrawn on 16.01.2024. The relevant part of said order reads as under:-

“Learned counsel for the petitioner, after arguing for some time, wishes to withdraw the present petition at this stage.

Dismissed as withdrawn at this stage.”

Thereafter, the present petition i.e. the second petition for grant of regular bail has been preferred by the petitioner on 22.07.2024.

4. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case as he has no connection whatsoever with the commission of the alleged offence in any manner. Learned counsel has further submitted that a false and fabricated story has been concocted by the complainant. It has been further contended that there are substantial inconsistencies between the testimony of the prosecutrix and the medical evidence, which cast significant doubt on the prosecution's case.

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engaged in any wrongful conduct with the prosecutrix, particularly in the absence of the corroborative medical evidence. Furthermore, according to the Medico Legal Report (MLR), there are no visible injuries on the body of the prosecutrix. Taken as a whole, the testimony of the prosecutrix fails to instill the requisite degree of confidence to reach a legal conclusion that the petitioner forcibly committed rape upon her. Furthermore, the prosecutrix, on her own accord, had stayed with the petitioner in a hotel on 16.08.2021 which fact is clearly decipherable that the prosecutrix had signed the register of the hotel and had given her aadhaar card mentioning her age as 22 years. Learned counsel has further submitted that all the material prosecution witnesses including the prosecutrix have already been examined and hence there is no likelihood of the petitioner tampering with evidence and/or influencing prosecution witnesses. In this view of the matter, learned counsel has prayed for grant of regular bail.

5. Learned State counsel has vehemently opposed the grant of regular bail to the petitioner on account of the present petition being non-maintainable as it is the second petition for grant of regular bail as also on merits thereof. Learned counsel further asserts that allegations raised are serious in nature as the testimony of the prosecutrix completely supports the case of the prosecution. According to her, the prosecutrix was in illegal custody and wrongful confinement of the petitioner and there are allegations of repeated rape of the prosecutrix upon the petitioner. Learned State counsel has further submitted that out of total cited 18 prosecution witnesses, 16 have been examined and the next date fixed before the trial court is 28.08.2024 for further proceedings. She seeks to place on record custody



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6. I have heard the learned counsel for the petitioner and have gone through the available records of the case.

7. It would be apposite to refer herein to a judgment passed by this Court in ***Rafiq Khan vs. State of Haryana and another: 2024: PHHC:054064***; relevant whereof reads as under:-

9. *The paramount issue, in any plea for grant of regular bail, is the liberty of an individual. Indubitably, within our society and jurisprudence, liberty is a cherished foundational principle and has fundamental ascendancy over all other attributes of social order. Even within the framework of Constitution, this principle is made conspicuous, inter alia, in Article 21 of our Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. The Cr.P.C., 1973 is one such procedural law which permits curtailment of liberty of anti-social and anti-national elements. Yet, liberty of an individual, the accused, must not transgress the rights of another individual, the victim, in terms of right to dignified everyday life without any imminent fear or threat. Additionally, the rights of the collective of individuals viz. the State/Society at large, also cannot be neglected. Therefore, while countenancing the facts for considering the bail, the rights of the triad of accused, victim and the State (Society at large) ought to be entailed. Ergo, while considering a bail plea, the Court ought to take into account this core concept(s).*

9.1 *An analytical perusal of Cr.P.C. explicates that this statute does not contain any provision relatable to maintainability or otherwise of second/successive bail petitions, including one(s) seeking regular bail. Once there is no statutory prohibition provided for in law, a Court is not logically empowered to import into it such prohibitions, especially in case of codified and legislated law. It is trite law that Courts ought not to read a provision in codified law which has not been specifically provided for by the legislature especially when such reading results into deprivation of rights. The bar contained in Section 362 of Cr.P.C. can, by no stretch of legal imagination, be said to be barring the filing of second/successive regular bail petition.*

9.2 *The Hon'ble Supreme Court in case of **Babu Singh** case (supra) has held that rejection of a bail petition does not, by itself, forbid a Court from considering another one, later in point of time. Similar is the ratio decidendi of the judgment of Hon'ble Supreme*



Court in **Kalyan Chandra Sarkar** (*supra*). Ergo, it can be safely inferred that the decision of a Court qua regular bail petition is essentially an interlocutory order and hence the postulation of *res judicata* does not apply to its realm.

9.3 The issue that next craves attention is as to what are the factors/parameters for consideration of second/successive regular bail petition(s).

9.4. The concordant legal position is that the essential pre-requisite for consideration of second/successive regular petition is the material/substantial change in circumstances and factors of alike nature. Indubitably, the further period of incarceration suffered by the petitioner-accused after rejection/withdrawal of first/earlier plea for bail, pace of trial, the witnesses turning hostile or not supporting prosecution case and changed medical condition(s) of accused would be pertinent factor(s). It goes without saying that these factors are only illustrative in nature and cannot by any means be said to be exhaustive.

9.5 No rigid or universal criterion can possibly be delineated to conclusively govern the exercise of judicial discretion, in determining, as to what would constitute as the above stated substantial change in circumstances. Factual flexibility, one additional or different fact, may cause a sea of difference. There is no gainsaying that each case has its own distinct and unique facts and, hence, exercise of such judicial power is best left to the judicial discretion of a Court, in accordance with the settled norms of our jurisprudence.

10. As an epilogue to the above discussion, the following principles emerge:

I Second/successive regular bail petition(s) filed is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II. Such second/successive regular bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.

III For the second/successive regular bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice. The metaphoric expression of seeking second/successive bail plea(s) ought not be abstracted into literal iterations of petition(s) without substantial, effective and consequential change in circumstances.



IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Making such an attempt is nothing but an utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive regular bail petition(s).

V In case a Court chooses to grant second/successive regular bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.”

8. No fresh substantial change in the circumstances has been brought forward which would indicate that the petitioner is entitled to maintain his second petition for grant of regular bail. The first regular bail petition filed by the petitioner was dismissed as withdrawn on 16.01.2024. From the entire factual conspectus brought forward in the present petition, no fresh ground or circumstance is made out so as to enable the petitioner to file and maintain the second regular bail petition. However, since the first regular bail petition was dismissed as withdrawn and there was no adjudication on merits thereof, this Court deems it appropriate to decide the instant one on merits thereof as well.

8.1 The allegations made in the FIR against the petitioner relate to committing rape upon the prosecutrix forcibly by keeping her in illegal confinement and extending threats in case the prosecutrix disclosed the same to anyone. The allegations raised against the petitioner are extremely serious in nature. The rival contention of learned counsel for the parties; regarding the veracity/inconsistency(s) in the testimony of the prosecutrix cannot be



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assumed that there are discrepancies in the statement of the prosecutrix, this by itself would not be a sufficient cause to grant regular bail to the petitioner.

8.2 The nature of allegations made against the petitioner, especially the fact that the petitioner along with co-accused is alleged to have forcibly kept the prosecutrix in illegal confinement against her wishes and committing aggravated penetrative sexual assault upon her, disentitles him for grant of regular bail. Moreover, the prosecutrix has alleged that she has been threatened by the accused in case she narrated the assault to anyone. Accordingly, this Court is of the considered opinion that the petitioner does not deserve the concession of regular bail. The petition is, thus, devoid of merits and is hereby dismissed.

9. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the investigating agency as also the trial Court shall proceed further, in accordance with law, without being influenced with this order.

10. The trial Court is directed to expedite the trial and conclude the same preferably within a period of 03 months from the date of receipt of certified copy of this order.

11. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

July 31, 2024
Ajay

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