

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-36419-2024
Date of decision: 05.08.2024

Mukesh alias Chinna

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Davneet Sangwan, Advocate,
for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

SUMEET GOEL, J. (ORAL)

The instant petition has been filed on 25.07.2024 under
Section 439 Cr.P.C., 1973 for grant of regular bail

As per the judgment rendered by this Court titled '*Abhishek Jain Vs. State of UT Chandigarh and another*' (CRM-M-31808-2024) **2024PHHC085784**, the instant petition is not maintainable under Section 439 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.72 dated 27.03.2024 registered for the

offences punishable under Sections 376(3), 506 of IPC and Section 4 of the POCSO Act, at Police Station Farakpur, District Yamuna Nagar.

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

“Duplicate application is as follows: To SHO Farakpur, Sir, it is requested that I Satrej, my husband Manoj Kumar, resident of village Phusgarh, I have two children, my husband works as a laborer and, my daughter Priyanka, who is 16 years old, has given her 12th class papers. Our neighbor's son Mukesh, son of Pritam Singh, used to harass my daughter for last year. We tried to make him understand many times but he did not agree. They took my daughter Priyanka with him to the village fields on the pretext of marriage, that field belongs to Palram, on 24.03.2024 at 03.30 pm, he did wrong things with my daughter Priyanka without her consent and threatened my daughter. Saying that if she tells this to anyone, I will kill you. Today my daughter has told us that Mukesh has done something wrong with her and has threatened to kill her. We should take legal action against Mukesh. Applicant Satrej w/o Manoj Kumar resident of village Funasgarh MO.9617020364 AJ Police Station-At this time Man L/SI No. 895 I am at the present police station and at the same time, Santrej's wife Manoj Kumar resident of village Fusgarh came to the present police station. She presented the above application which was found to be a crime of compulsion under Section 4 POCSO ACT, 506 IPC. Case No. 72 dated 27.03.2024 Section 4 POCSO. ACT.506 IPC, Farkapur police station was registered. A copy of the FIR was prepared by computer, which would be sent as a special report to the concerned officer through Bajarria email, along with the original application to the police, in the form of L/SI to ASI Amita No. 1033 I leave for HC Sandeep Kumar No. 16, I am in the records of the incident site, done as per law.”

3. Learned counsel for the petitioner has argued that petitioner was arrested on 27.03.2024. Learned counsel for the petitioner has further argued that the petitioner has been falsely implicated in the FIR in question on account of a dispute arising between the family of the petitioner and the family of the victim as they are living in the same vicinity. Learned counsel has further argued that the prime prosecution witness namely the victim

(when examined as PW-3) has not supported the cause of the prosecution and hence the trial is not likely to culminate into conviction. Thus regular bail is prayed for.

4. Learned counsel for the State 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 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 27.03.2024 whereinafter investigation was carried out & challan was presented on 20.04.2024. Total 14 witnesses have been cited out of which only 07 already stands examined. It is not in dispute that the prime prosecution witness namely the victim (when examined PW-3) has not supported the case of the prosecution and has, in fact, being declared hostile witness by the prosecution. The rival contentions of the learned counsel for the parties; regarding the weightage required to be attached to the testimonies of the witnesses who have resiled; will 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 the custody certificate dated 02.08.2024 filed by the learned State counsel, petitioner has suffered incarceration for a period of more than 4 months & is not shown to be involved in any other case.

Suffice to say, further detention of the petitioner as an undertrial is not warranted.

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 learned 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

August 05, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No