



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

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CRM-M No.36426 of 2024 (O & M)
Date of decision : 16.9.2024

Sandeep Singh**Petitioner**

Versus

State of Punjab**Respondent**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Paras Jagga, 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.51 dated 01.8.2023, under Sections 376 of IPC (Section 506 IPC added later on) and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (Amended 2019), registered at Police Station Bhadson, District Patiala.

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

'At this time this one statement of Surjit kaur wife of Late Nirmal Singh, resident of Village Jhambali Saani, Tehsil Nabha, District Patiala has been received for registration of FIR against Sandeep Singh son of Gyan Singh resident of village Jhambali Saani Tehsil Nabha district Patiala the subject of which is," Stated that I am a resident of the said address and do housework. I had 4 children out of which two boys and 2 girls were born.



That my elder boy named Avtar Singh, younger girl Harvinder Kaur, younger Soma Rani and the youngest boy named Kulwant Singh were born to him. My both girls are always married and my both sons are dead. My elder son Avtar Singh got separated from my daughter-in-law Hardeep Kaur in 2013. My son Avtar Singh died in the year 2018. I have a daughter Gurpreet Kaur aged about 15 years who lives with me in my house, who told me today that our village boy Sandeep Singh son of Gyan Singh, a resident of Jhambali Sahni village, when I went to the fields of village Samspur on 25th June 2023 to cut the fodder, Sandeep Singh forced me in the corn crop and had sexual relations and Sandeep Singh asked me to have sexual relations with him and said that if you tell anyone about this or say anything, your family and you will be harmed. My granddaughter Gurpreet Kaur told me and he is forcing my grand daughter to have sexual relations again, so I consulted my relatives and was coming to the police station to report my daughter Soma Rani along with me. You have met me at Tarkheri Chowk Bhadson, you have written a statement and i have heard, it is correct. Action should be taken against Sadeep Singh. RTI Surjit Kaur above said, endorsed by Soma Rani Verification True Sandeep Kaur Police Station Bhadson Date: 01/08/2023'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 01.8.2023. Learned counsel has further argued that the prosecution is bringing forward its witness in a lackadaisical manner before the trial Court on which account the petitioner is forced to suffer undue incarceration. Learned counsel has further submitted that the prime prosecution witness, the victim, is not turning up despite multiple opportunities having been afforded by the trial Court in this regard. Learned counsel has further argued that the petitioner has been falsely implicated in the present FIR and there is no medical evidence available on record, so far, so as to substantiate the case of the prosecution. To buttress his arguments, learned counsel for the petitioner has relied upon the orders passed by the trial Court dated 21.5.2024, 4.6.2024, 5.7.2024,



18.7.2024 as also 2.8.2024. Thus, 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 15.9.2024 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. At this juncture, it is noticeable that the petition in hand is third petition moved on behalf of the petitioner for grant of regular bail. The first petition was dismissed as withdrawn on 25.4.2024 and the order passed therein reads as under:

- ‘1. Learned counsel for the petitioner seeks to withdraw the present petition at this stage.
2. Dismissed as withdrawn at this stage.
3. Pending application(s), if any, shall also stand disposed off.’

7. The second petition preferred by the petitioner was dismissed as withdrawn on 17.7.2024 and the said order reads as under:

- ‘1. Learned counsel appearing for the petitioner seeks to withdraw the present petition so as to enable the petitioner to file an appropriate petition/application, in accordance with law, in terms of provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023.
2. Ordered accordingly.
3. Pending applications, if any, shall also stand disposed off.’

8. The petitioner was arrested on 01.8.2023 wherein after investigation was carried out and challan was presented on 4.10.2023.

Charges were framed on 17.10.2023. Total 19 prosecution witnesses have



been cited out of which only 8 stand examined till date. A perusal of the zimni orders passed by the trial Court including the orders dated 21.5.2024, 4.6.2024, 5.7.2024, 18.7.202 and 2.8.2024 clearly shows that the prosecution evidence is not being completed in the desired manner at reasonable pace. The petitioner-accused cannot be prejudiced & kept behind bars for this fault on part of the prosecution.

9. It would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in ***Criminal Appeal No.2787 of 2024*** titled as ***Javed Gulam Nabi Shaikh vs. State of Maharashtra and another,*** decided on 03.07.2024; relevant whereof reads as under:-

“19 If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly. howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.”

10. Keeping in view the entirety of the facts and circumstances of the case, especially the pace at which the prosecution witnesses are being examined, it is deemed appropriate to consider the instant petition. As per custody certificate dated 15.9.2024, the petitioner has suffered



incarceration for more than one year and one month & is not shown to be involved in any other case. The cause of delay in completing the prosecution evidence cannot be fastened upon the petitioner in any manner whatsoever. The rival contention of learned counsel for the parties; as to whether the petitioner has been falsely implicated in the present FIR as also the question as to whether there is sufficient medical evidence on record to substantiate the case of the prosecution, 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 material has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence.

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of present case.

11. 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.

12. 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.

13. Ordered accordingly.

14. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

15. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

16.9.2024
Ashwani

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