



CRM-M-36937-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36937-2024 (O&M)

Date of Decision: 05.09.2024

ABHAY PRATAP

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. B.S. Dhull, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

...

SUMEET GOEL, J. (Oral)

CRM-35563-2024

Application is allowed, as prayed for. Zimni orders are taken on record.

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1. The instant petition has been filed on 29.07.2024 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.

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Present petition has been filed for grant of regular bail to the petitioner in case bearing FIR No.160 dated 21.12.2022, registered for the offences punishable under Sections 376(2), 384, 506, 201 and 406 of IPC at Women Police Station, Faridabad.

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

“To SHO, P.S Women Central Faridabad, Respected Sir, I Shobhavati D/o Ram Narayan Rai R/o H.No. 1003 Near Kali Mandir Santosh Nagar, Amar Nagar, Sector 37, Faridabad. On July 2022, I became friends with Abhay who is presently residing as a tenant at flat no 301 AWS, S.P.R, A Block, Sector 82, Faridabad, through my friend Shukni @ Riya. Shukni @ Riya was in a live-in relationship with Abhay, I asked Riya to help me find a job on which Riya said that you will get a job where Abhay is presently working. That on 04.09.2022, Abhay called from mobile no 93151150072, which belongs to Shukni @ Riya and he told me to visit his house on dated 05.09.2022, on the next day dated 05.09.2022, I woke up early and reached his flat around 7:30 am in the morning without taking bath. That around 9:00 am in the morning Riya Alias Shukni left for her work. That Abhay told me to visit a bank at 10:00 in the morning for Interview, on which I thought I have sometime left with me, so I will take bath and be fresh. That when I took bath in the bathroom of their house and when I came out of the bathroom, then Abhay said that you will not get the job at that place as their vacancies are foil. You can stay and leave after meeting Riya after that, Riya came around 3 pm and after meeting her I left for my house. Next day Abhay Called me, from Riya's phone and told me yesterday while you were taking bath, I have made a video of you and that is safe with me and threatened me saying you will have to do whatever I tell you otherwise I will show this video to your father and if you want the video then, come with Rs. 2000 and take your video and thereafter, his phone was switched off, it was off for few days and I got scared. On 15 September, along with Rs 2000 went to his house but Abhay and Riya were not at their house, I waited for them and they came after a while. I asked both of them why was the phone switched off, on that Riya told me they both had a fight that's why Abhay broke his Phone and they showed me the said phone which was in the garbage and Abhay and Riya had only this phone, Abhay said go home I will talk to you in the evening. After that Abhay called me from his mobile number 87800645729 and told me how dare you left without paying money, whenever you come, come with the money and take your video. That on date 16.9.2022, I went to Abhay's

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house and paid him Rs. 2000, after that, he asked me to bring my father's ATM, on the very next day I brought my father's ATM and handed over the same to him because of fear. Thereafter, he threatened me about the video and took my mother's gold earring from me and also withdrew Rs. 10,000 from my father's ATM. When my father received the message, my father blocked the ATM card. On 20.09.2022, Abhay threatened me about the video and called me to his flat. When I reached his flat Abhay was alone and at around 10:00, Abhay forcefully made physical relation with me against my will and threatened me that if I talk about this to anybody, he will share my video with my father and kill me and my mother father. I never shared about this to anyone due to fear. After that on dated 23.09.2022 he called at his house by threatening me with the video. And made forcefully made relationship with me. He was alone at that day also. When I came to know that he had no video of me then I stopped meeting and talking to him, but I asked Abhay many times to return my mother's earrings and my money but he did not return it. That Abhay has done bad to me, kindly take strict legal actions against Abhay S.D/ Shobmti.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 20.01.2023. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated into the FIR in question on account of a money dispute. Learned counsel for the petitioner has further submitted that the earlier two bail petitions preferred by the petitioner were withdrawn on 11.10.2023 as also on 18.04.2024 but the trial in question is not progressing. In this regard, learned counsel for the petitioner has relied upon the orders dated 21.05.2024, 06.08.2024, 07.08.2024 as also 09.08.2024 passed by the trial Court. 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.

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6. The petitioner was arrested on 20.01.2023 whereinafter investigation was carried out & challan was presented on 27.02.2023. Total 16 prosecution witnesses have been cited out of which 7 have been examined. It is not in dispute that the testimony of the victim already stand recorded as a prosecution witness. The rival contention of the learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question; 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.

A perusal of orders dated 21.05.2024, 06.08.2024, 07.08.2024 as also 09.08.2024 passed by the trial Court indicate that the trial is not being procrastinated on account of any conduct of the petitioner (herein). In this regard, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in a case of '**Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another**' decided in **Criminal Appeal No.2787 of 2024 arising out of SLP (Crl) No.3809 of 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

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have been infringed thereby violating Article 21 of the Constitution.”

Indubitably, the petition in hand is the third bail petition preferred by the petitioner. The first petition preferred by the petitioner was withdrawn on 11.10.2023 and the second petition preferred by the petitioner was dismissed as withdrawn on 18.04.2024. A perusal of the orders dated 21.05.2024, 06.08.2024, 07.08.2024 as also 09.08.2024 passed by the trial Court do not indicate that any fault can be fastened upon the petitioner for the non-culmination of trial. Accordingly, this Court deems it appropriate to consider the instant bail petition.

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. As per the custody certificate dated 04.09.2024 filed by the learned State counsel, the petitioner has suffered incarceration for about 01 year 07 months and 15 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.



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- (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.

05.09.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No