

220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-38841-2024

Date of Decision: 16.10.2024

RAHUL MISHRA

...Petitioner

Vs.

STATE OF HARYANA

...Respondent

CORAM:- HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. R.K. Gupta, Advocate for the petitioner.

Mr. Priyanka Sadar, AAG, Haryana.

SUMEET GOEL, J. (Oral)

The instant petition has been filed on 05.08.2024 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.

1. The present second application has been filed for grant of regular bail to the petitioner in case FIR No. 322 dated 24.10.2023 under Section 506 IPC and Section 8 of the POCSO Act, registered at Police Station Kalka

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

Sir, the copy of complaint is as under: To. The SHO. Police Station Kalka, Sir, It is respectfully requested that I Premlata wife of Lt. Sushil Kumar am resident of H. No. 236 Khera Sita Ram New Gunjan Complex Kalka District Panchkula. My husband has died. I along with my daughter are residing with the family of my brother-in-law (devar) Rahul. I have one daughter namely Nidhi whose date of birth is 03.11.2007 and is a student of 11th class. My real 'devar' Rahul is committing obscene act with my daughter from 2 years when my daughter is alone in the house. My daughter told me that he puts his hand on her chest and touches my daughter's private part. When my daughter resists my devar from doing wrong then he says to my daughter that I will kill your mother and says if you complained anywhere then I will kill you also and threaten to pour acid on my daughter. I request you to take legal action against my devar Rahul. Sd/- Premlata 9729862372 9034231062 24-10-2023. From the averments of the above application offence under sections 8 POCSO, 506 IPC PS Kalka is having been found to have been committed, FIR No. 322 Dated 24.10.2023 under sections 8 POCSO, 506 IPC is registered in the Police Station Kalka and copy police file with original complaint is kept by me Lady ASI Sarswati 12/Panchkula and proceeding towards the spot of crime. Special copies of the FIR are being sent to the officials through email. Officials are informed about the circumstances of the case. Fulfillment of record completed as per law. (This case is registered by computer operator constable Rahul 5/1109 HAP in my ASI Sarswati 12/Panchkula presence as per my instructions.

3. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the FIR on account of domestic/financial dispute between the petitioner and the complainant. He further argued that the petitioner was arrested on 30.10.2023 and the the

prime prosecution witnesses namely, victim and the complainant already stands recorded. He further submitted that the testimonies of these two prime witnesses do not inspire confidence and there are number of inconsistencies. 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 instant bail application is the second bail application preferred by the petitioner before this Court on 05.08.2024. On 03.07.2024, the following order was passed:

1. *Faced with the situation that the victim and the complainant are yet to be examined as a prosecution witness, learned counsel for the petitioner 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*

7. The petitioner was arrested on 30.10.2023, whereinafter investigation was carried out and challan was presented. Total 13 prosecution witnesses have been cited out of which 03 witnesses have been recorded. It is not in dispute that the prime prosecution witness, namely the victim as also the mother of the victim has been recorded. The rival contention of the learned counsel for the parties; as to whether the petitioner has been falsely implicated in the FIR in question on account of domestic/financial dispute as also the weightage required to be attached to

the testimonies of the victim and complainant/mother of the victim and alleged inconsistencies therein; shall be gone into account during the course of trial. Irrefutably, after passing of the above said order dated 03.07.2024, the testimonies of the victim and the complainant stands recorded as prosecution witnesses. This factum, in the considered opinion of this Court, is sufficient to consider favourably in the instant bail petition (being second bail application). 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. As per the custody certificate dated 15.10.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 11 months and 16 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.

8. 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.

- (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.

9. 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.

10. Ordered accordingly.

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

12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

16.10.2024

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