

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

107/228

CRM-38168-2024 in/&
CRM-M-39266-2024 (O&M)

Date of decision: 23.09.2024

Rajender

....Petitioner

V/s

State of Haryana and another

....Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Rakesh Gupta, Advocate for the applicant-petitioner.
Ms. Priyanka Sadar, AAG Haryana.
None for the respondent No.2.

SUMEET GOEL, J. (Oral)

CRM-38168-2024

For the reasons mentioned in the application and in view of the submissions made by learned counsel for the applicant-petitioner, the present application is allowed. The zimni orders from 29.03.2023 to 28.08.2024 are taken on record as Annexure P-10.

CRM-M-39266-2024

1. Present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for grant of regular bail to the petitioner in case bearing FIR No.308 dated 13.12.2022, registered for the offences punishable under Sections 323, 354, 376-D & 379-B of IPC at Police Station Chhainsa, District Faridabad.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

“To, S.H.O. Sahib, Adarsh, Police Station Chhainsa, Faridabad. Sir, it is requested that I am Kavita W/o Parkash resident of Village Chhainsa. Today on 13/12/2022 at about 2:30 PM, I had gone to my field near Shivji Mandir to collect dung cakes. Then upon finding me alone, Rajender S/o



Rajbir, Kirpal S/o Umesh R/s of Chhainsa made me to fall down by hugging me from behind and under an ill-intention, made an attempt to commit rape upon me and pressed my neck and bitten my cheek with teeth. Upon my opposition, an attempt was made to strangulate me to death. Rajender S/o Rajbir gave a Danda blow upon my right hand and both of them gave me kick and fist blows. When I tried to rescue myself, then Rajender and Kirpal snatched the gold earrings (Kundals) and nose pin (Laung) from me. Meanwhile, my husband Parkash came on the spot and we nabbed Rajender and Kirpal S/o Umesh managed to run away from there. Your goodself is requested to take strict action against these persons. We have nabbed Rajender and produced before your goodself. Complainant Sd/- Kavita W/o Parkash R/o Chhainsa. ”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 14.12.2022. Learned counsel has further argued that the petitioner has been falsely implicated into the FIR in question. Learned counsel has further argued that the charges in the FIR in question was framed on 29.03.2023 but the victim is not repeatedly coming to have her testimony recorded which factum is clearly decipherable from the orders dated 16.01.2024, 16.02.2024, 12.03.2024, 19.04.2024, 17.05.2024 and 23.07.2024 passed by the trial Court. Learned counsel has further submitted that repeatedlyailable warrants were issued *qua* the victim but she did not turn up for having her testimony recorded as a prosecution witness. Learned counsel has further submitted that on 28.08.2024, the victim was present in Court to have her testimony recorded but the same was not recorded on account of request having been made by the learned Public Prosecutor. In this view of the matter, learned counsel has prayed for grant of the regular bail.

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 20.09.2024 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. The petitioner was arrested on 14.12.2022 whereinafter investigation was carried out and challan stands presented on 03.02.2023. Total 24 prosecution witnesses have been cited and as on today only 02 prosecution witnesses have been recorded and hence the culmination of the trial will, of-course, take its own time. The rival contention of 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 the zimni orders passed by the leaned trial Court brought on record especially the orders dated 16.01.2024, 16.02.2024, 12.03.2024, 19.04.2024, 17.05.2024 and 23.07.2024 indicate that the victim was not repeatedly turning up to have her testimony recorded despite bailable warrants having been issued against her. Further, on 28.08.2024 the victim had come forward to have her testimony recorded but the same could not be recorded on account of the request made on behalf of the State.

6.1 At this juncture, 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.

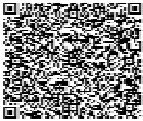
21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.”

In view of the above, it is clear that the procrastination of the culmination in trial cannot be attributed to the petitioner in any manner whatsoever. 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 custody certificate dated 20.09.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of more than 01 year, 09 months and 07 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 case.

7. 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 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

September 23, 2024
Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No