



CRM-M-39311-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

106/217

CRM-35550-2024 in/&
CRM-M-39311-2024 (O&M)

Date of decision: 11.09.2024

Roop Kishore

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Shikhar Goel, Advocate for the petitioner
(through Video Conferencing)

Ms. Priyanka Sadar, AAG Haryana.

SUMEET GOEL, J. (Oral)

CRM-35550-2024

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 of the trial Court are taken on record as Annexure P-13.

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The instant second petition has been filed on 06.08.2024 under Section 439 of Cr.P.C., 1973 for grant of regular bail.

As per the judgment rendered by this Court titled as '*Abhishek Jain Vs. State of U.T. Chandigarh and another (CRM-M-31808-2024:2024:PHHC:085784)*', 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 BNSS, 2023.



1. The present second petition has been filed by the petitioner- Roop Kishore seeking regular bail in FIR No.101 dated 21.08.2021 registered under Section 506 of IPC and Section 6 of POCSO Act, 2012 at Police Station Women, Central Faridabad, District 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 Mahila Police Station Central Sec-16A, Faridabad, Ma'am, I am XXXXXX D/o XXXXXX R/o Dayal Nagar, house number A-17. Faridabad. Today on 21-08-2021, at 11 am, I came to QRG Hospital Sec-16 Faridabad, to get my father's dialysis done. I left my father at the dialysis centre on the 3rd floor and was waiting in the waiting room outside the dialysis centre on the 3rd floor itself because dialysis takes 4 hours. Then I went to use the bathroom on the 3rd floor at around 2 pm. When I came out of the bathroom, I met a young boy who introduced himself as Roop Kishore R/o Hanuman Nagar, Bharat Colony Gali No. 6 and told me that he worked as a housekeeping staff in the hospital and asked me to come with him as he had some work. So, I thought there might be some work related to my father's treatment, so I followed that boy. As soon as I started going down the stairs, that boy dragged me through the stairs to the basement and took me to an empty space below the stairs in the basement and raped me forcefully, left me there and ran away. Then, when I came upstairs, I told a lady staff at the hospital and then I came home with my father. And after coming home I told everything to my sister-in-law, Sapna. Now I have come to the police station with my mother, father and brother, Tej Prakash for action. The boy was brown in complexion and was wearing a white shirt and grey pants. And he was wearing an orange coloured I-card around his neck. Strict legal action should be taken against him. SD - XXXXXX”

3. The petitioner had earlier applied for grant of regular bail before this Court which was dismissed as withdrawn on 15.01.2024. The relevant part of said order reads as under:-

“Learned counsel for the petitioner seeks permission to withdraw the present petition.



Permission is granted. The present petition is dismissed as withdrawn.”

Thereafter, the present petition i.e. the second petition for grant of regular bail has been preferred by the petitioner on 06.08.2024.

4. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case as he has no connection whatsoever with the commission of the alleged offence in any manner. It has been further contended that there are major contradictions and substantial improvisation in the statement of the prosecutrix recorded under Section 164 of Cr.P.C., 1973 and her evidence adduced during the course of trial, which cast significant doubt on the prosecution's case. Learned counsel has further submitted that the prosecution case is based solely on the testimony of the prosecutrix and her testimony is shrouded with suspicion which makes it abundantly clear that she is not a sterling witness and rather suppressing some real facts about the alleged incident. Learned counsel asserts that it is implausible to conclude that the petitioner is engaged in any wrongful conduct with the prosecutrix, particularly in the absence of any corroborative medical evidence. Furthermore, according to the FSL report, the blood samples did not match with the samples of the accused which indicates that petitioner has not committed any offence as alleged. According to learned counsel, there was an altercation between the petitioner and the victim on account of which the petitioner has been falsely implicated into the FIR in question. Learned counsel has further submitted that there is no veritable CCTV footage available to support the case of the prosecution. Learned counsel has further submitted that there was misunderstanding at the end of



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the victim that her relationship has been broken with one Anwar on account of the deeds by the petitioner and hence the petitioner has been falsely implicated in the instant FIR. Learned counsel has further submitted that the material prosecution witnesses including the prosecutrix and her mother have already been examined and hence there is no likelihood of the petitioner tampering with evidence and/or influencing prosecution witnesses. In this view of the matter, learned counsel has prayed for grant of regular bail.

5. Learned State counsel has vehemently opposed the grant of regular bail to the petitioner on account of the present petition being non-maintainable as it is the second petition for grant of regular bail as also on merits thereof. Learned counsel further asserts that allegations raised are serious in nature as the testimony of the prosecutrix and her mother completely supports the case of the prosecution. According to learned State counsel, the petitioner has allegedly committed sexual assault upon the victim/prosecutrix, who is prima facie stated to be around 14 years of age at the time of alleged occurrence. Learned State counsel has further submitted that out of total cited 27 prosecution witnesses, 05 have been examined and 01 has been given up. She seeks to place on record custody certificate dated 10.09.2024 in Court, which is taken on record.

6. I have heard the learned counsel for the petitioner and have gone through the available records of the case.

7. It would be apposite to refer herein to a judgment passed by this Court in ***Rafiq Khan vs. State of Haryana and another: 2024:***



9. *The paramount issue, in any plea for grant of regular bail, is the liberty of an individual. Indubitably, within our society and jurisprudence, liberty is a cherished foundational principle and has fundamental ascendancy over all other attributes of social order. Even within the framework of Constitution, this principle is made conspicuous, inter alia, in Article 21 of our Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. The Cr.P.C., 1973 is one such procedural law which permits curtailment of liberty of anti-social and anti-national elements. Yet, liberty of an individual, the accused, must not transgress the rights of another individual, the victim, in terms of right to dignified everyday life without any imminent fear or threat. Additionally, the rights of the collective of individuals viz. the State/Society at large, also cannot be neglected. Therefore, while countenancing the facts for considering the bail, the rights of the triad of accused, victim and the State (Society at large) ought to be entailed. Ergo, while considering a bail plea, the Court ought to take into account this core concept(s).*

9.1 *An analytical perusal of Cr.P.C. explicates that this statute does not contain any provision relatable to maintainability or otherwise of second/successive bail petitions, including one(s) seeking regular bail. Once there is no statutory prohibition provided for in law, a Court is not logically empowered to import into it such prohibitions, especially in case of codified and legislated law. It is trite law that Courts ought not to read a provision in codified law which has not been specifically provided for by the legislature especially when such reading results into deprivation of rights. The bar contained in Section 362 of Cr.P.C. can, by no stretch of legal imagination, be said to be barring the filing of second/successive regular bail petition.*

9.2 *The Hon'ble Supreme Court in case of **Babu Singh** case (supra) has held that rejection of a bail petition does not, by itself, forbid a Court from considering another one, later in point of time. Similar is the ratio decidendi of the judgment of Hon'ble Supreme Court in **Kalyan Chandra Sarkar** (supra). Ergo, it can be safely inferred that the decision of a Court qua regular bail petition is essentially an interlocutory order and hence the postulation of res judicata does not apply to its realm.*

9.3 *The issue that next craves attention is as to what are the factors/parameters for consideration of second/successive regular bail petition(s).*



9.4. *The concordant legal position is that the essential pre-requisite for consideration of second/successive regular petition is the material/substantial change in circumstances and factors of alike nature. Indubitably, the further period of incarceration suffered by the petitioner-accused after rejection/withdrawal of first/earlier plea for bail, pace of trial, the witnesses turning hostile or not supporting prosecution case and changed medical condition(s) of accused would be pertinent factor(s). It goes without saying that these factors are only illustrative in nature and cannot by any means be said to be exhaustive.*

9.5 *No rigid or universal criterion can possibly be delineated to conclusively govern the exercise of judicial discretion, in determining, as to what would constitute as the above stated substantial change in circumstances. Factual flexibility, one additional or different fact, may cause a sea of difference. There is no gainsaying that each case has its own distinct and unique facts and, hence, exercise of such judicial power is best left to the judicial discretion of a Court, in accordance with the settled norms of our jurisprudence.*

10. *As an epilogue to the above discussion, the following principles emerge:*

I Second/successive regular bail petition(s) filed is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II. Such second/successive regular bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.

III For the second/successive regular bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice. The metaphoric expression of seeking second/successive bail plea(s) ought not be abstracted into literal iterations of petition(s) without substantial, effective and consequential change in circumstances.

IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Making such an attempt is nothing but an utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive regular bail petition(s).



V In case a Court chooses to grant second/successive regular bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.”

8. No fresh substantial change in the circumstances has been brought forward which would indicate that the petitioner is entitled to maintain his second petition for grant of regular bail. The first regular bail petition filed by the petitioner was dismissed as withdrawn on 15.01.2024 and indubitably, 08 months have passed since then. A perusal of the zimni orders does not reflect that the trial is not proceeding. However, since the first regular bail petition was dismissed as withdrawn and there was no adjudication on merits thereof, this Court deems it appropriate to decide the instant one on merits thereof as well.

8.1 The allegations made in the FIR against the petitioner relate to committing forcible sexual assault upon the victim/prosecutrix. On 21.08.2021 at about 11:00 A.M. the prosecutrix came to QRG hospital, Faridabad for dialysis of her father. At about 02:00 P.M., the prosecutrix went to washroom and while she was coming back, she met the petitioner who asked her to accompany him for some work. Thereafter, while she was coming downstairs, he dragged her to the basement through stairs and committed rape upon her. The allegations raised against the petitioner are extremely serious in nature. The rival contention of learned counsel for the parties; regarding the veracity/discrepancies in the statements of the victim/prosecutrix cannot be looked into, in detail, at this stage, lest it may



prejudice the trial. Even if it be assumed that there are discrepancies in the statements of the prosecutrix, this by itself would not be a sufficient cause to grant regular bail to the petitioner. Furthermore, the allegations against the petitioner are serious in nature and he is required to substantiate his defence by leading cogent evidence.

8.2 The nature of allegations made against the petitioner, especially the fact that the petitioner is alleged to have forcibly dragged the prosecutrix and committed aggravated penetrative sexual assault upon her, disentitles him for grant of regular bail. Moreover, the prosecutrix/victim has not turned hostile and has supported the case of the prosecution. Accordingly, this Court is of the considered opinion that the petitioner does not deserve the concession of regular bail. The petition is, thus, devoid of merits and is hereby dismissed.

9. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the investigating agency as also the trial Court shall proceed further, in accordance with law, without being influenced with this order.

10. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

September 11, 2024
Ajay

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