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

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DATE OF DECISION :- 13.09.2024

Sunil **...Appellant**

Versus

State of Haryana and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Sahil Gupta, Advocate for the appellant.
Ms. Mahima Yashpal, DAG, Haryana.

SUMEET GOEL, J. (Oral)

1. Present appeal has been filed under Section 14A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the order dated 15.07.2024 passed by learned Additional Sessions Judge, Fast Track Special Court, Hisar for grant of regular bail in FIR No. 721 dated 17.09.2023, registered for the offences punishable under Sections 366, 363A, 201, 376, 376(3), 376(D), 420 of IPC and Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 4 of POCSO Act (Sections 201, 376, 376(3), 376(D), 420 of IPC and Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 4 of POCSO Act added later on) at Police Station Azad Nagar, Hisar, District Hisar.
2. The case set up in the FIR in question (as set out in the present appeal) by the appellant is as follows:-

To The Incharge Police Post Mangali, District Hisar. Respected Sis, it is requested that I, Rajrani W/o Babu Lal, am the resident of Mangali Aklan. I have two children. Elder one is Jatin and younger to him is daughter Nisha aged about 15 years. My daughter Nisha and her friend Monika D/o Gulab Singh, R/o Mangali Mohabbat, Hisar had gone to Government Sr. Sec.



School, Mangali. Hisar at about 8:00 am on 16.09.2023. That my daughter Nisha and her friend Monika had not returned to home from school. That Nisha and her friend Monika has suspicion on Aditya R/o Fatehabad. That my daughter Nisha and her friend Monika was enticed away by Aditya on the pretext of marriage and he took away my daughter Nisha and her friend Monika. I have full suspicion that my daughter and her friend Monika D/o Balraj resident of Mangali Anklaan is also with her. My daughter Nisha and her friend Monika be traced out. Legal action be taken against Aditya R/o Fatehabad. Sd/ Raj W/o Babu Lal, Rio Mangali Aklan, Hisar Dated 17.09.2023. Mob. No.8307142228.”

3. Counsel for the appellant has argued that the appellant is in custody since 19.09.2023. Learned counsel for the appellant has further submitted that a perusal of the FIR and the material available on the record would indicate that there was consensual friendship between the appellant and the victim on account of which the victim had left the house of her lawful guardian on her own accord and later on due to some misunderstanding the FIR in question has been registered. Learned counsel for the appellant has further submitted that the appellant is a young man aged 22 years having with no criminal antecedents. In this view of the matter, learned counsel has prayed for grant of regular bail.

4. Learned Counsel for the State opposed the present appeal arguing that the allegations raised are serious in nature and thus the appellant does not deserve the concession of regular bail.

5. Mr. Jasdev Singh Thind, Advocate has filed vakalatnama for respondent No. 2-complainant. The same be taken on record.

Learned counsel for respondent No. 2-complainant has vociferously opposed the grant of regular bail to the appellant by arguing that the allegations made against the appellant are serious in nature. Learned

counsel for respondent No. 2-complainant has further submitted that an

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innocent girl of 15 years has been raped by the appellant and thus the appellant does not deserve the concession of regular bail.

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

7. The appellant was arrested on 19.09.2023. After completion of investigation, the challan was presented on 04.12.2023. As per the admitted position, the charges have not yet been framed and the trial proceedings are fixed for 23.09.2024 for consideration of charge. Total 31 prosecution witnesses have been cited and it is indubitable that culmination of the trial will take its own time. At this juncture 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 have been infringed thereby violating Article 21 of the Constitution."



The rival contentions of learned counsel for the parties; as to whether there was some kind of friendship between the appellant and the victim and whether the victim had left her lawful guardianship on her own accord and had met the appellant out of her own free will & as to whether there was some misunderstanding later on which led to the registration of the FIR in question; shall be gone into during the course of trial. This Court does not deem it appropriate to delve into these rival contentions at this stage lest it may prejudice trial. No tangible material has been brought on record to show that there is likelihood of the appellant absconding from the process of justice or interfering with the prosecution evidence. As per the custody certificate dated 12.09.2024 filed by the State counsel, the appellant has suffered incarceration for a period of 11 months and 22 days & is not shown to be involved in any other case. In the considered opinion of this Court, further detention of the appellant as an under trial is not warranted.

8. In view of the factual matrix of the present case, the instant appeal is allowed. Appellant 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 appellant shall remain bound by the following conditions:-

- (i) The appellant shall not mis-use the liberty granted.
- (ii) The appellant shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The appellant shall not absent himself on any date before the trial.
- (iv) The appellant shall not commit any offence while on bail.
- (v) The appellant shall deposit his passport, if any, with the trial Court.



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- (vi) The appellant 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/Illaq Magistrate.
- (vii) The appellant 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 appellant.

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

13.09.2024
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No