



CRM-M-40255-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40255-2024 (O&M)
Date of Decision: 17.09.2024

IKLAS ALIAS IKLASH

.. Petitioner

Vs.

STATE OF HARYANA AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Aiman J. Chishti, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

Ms. Malkit Kaur, Advocate for respondent No.2.

...

SUMEET GOEL, J. (Oral)

1. The instant petition has been filed on 11.08.2024 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.

Present petition has been filed for grant of regular bail to the petitioner in case bearing FIR No.14 dated 21.04.2023, registered for the offences punishable under Sections 363, 366, 506 and 34 of IPC and

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Section 6 of POCSO Act, 2012 at Police Station Women Police Station Mewat, District Nuh.

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

"To, the SHO Women Police station Nuh, District Nuh. Complaint regarding taking legal action against 1- Iklash son of Ratti Mo., Kamil son of Ratti Mo., Jaida wife of Ratti Mo. Resident of Akeda Police Station Nuh. Subject: Sir it is requested that myself applicant Sxxxx son Hxxxxxx is a resident of Akera Police Station Sadar Nuh. I belong to a poor family. It is the incident of dated 20.04.2023 at around 1:00-1:30 in the noon that my daughter Kxxxx who is 8 years old. The house of my uncle Sattar which is in the fields, from there my daughter Kxxxx was coming inside the village to her home whom accused Iklas lured her in the way and took her into the Kikar and did wrong act with her forcefully when my daughter shouted due to the pain then the people residing nearby came and seeing them the accused fled from there. When I and my wife Sakunnat got the news of this, then I and my wife Sankunat complained to the mother of the accused Iqlas, Zaida and brother Kamil, then instead they ran to beat us and abused us and threatened by saying do whatever you want to do, you cannot do anything to us. Therefore it is requested that strict legal action be taken against the said accused and and get my daughter medically examined. Dated 21.04.2023 Applicant Sxxxxxx son Hxxxxxx resident of village Akeda Nuh District Nuh Mo. 8307453389 Nuh."

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 21.04.2023. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated into the FIR in question and there is no medical evidence available on record to support the case of the prosecution. Learned counsel for the petitioner has further submitted that all private witnesses stand examined and thus there is no likelihood of the petitioner interfering with the prosecution evidence. Thus, regular bail is prayed for.

4. Learned State counsel seeks to place on record status report dated 12.09.2024 in Court, which is taken on record.

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5. 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.

6. Learned counsel for the complainant/respondent No.2 has vociferously opposed the grant of regular bail on the ground that the allegations made against the petitioner are serious in nature. Learned counsel for respondent No.2 has urged that the victim remained hospitalized for 08 days on account of the sexual assault by the petitioner. Learned counsel has argued that there is sufficient evidence available on record to show the guilt of the petitioner & hence he ought not to be granted the concession of regular bail.

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

8. The petitioner was arrested on 21.04.2023 whereinafter investigation was carried out & challan was presented on 15.07.2023. Total 21 prosecution witnesses have been cited out of which all the private witnesses already stand examined. The rival contention of the learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question & as also whether there is sufficient medical evidence available on record; 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. 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 16.09.2024 filed

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more than 01 year, 04 months and 25 days & is not shown to be involved in any other case. 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:-

"8. Having regard to the aforesaid, we wonder by what period of time, the trial will ultimately conclude. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India.

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

*10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in **Gudikanti Narasimhulu & Ors. v. Public Prosecutor**, High Court reported in (1978) 1 SCC 240. We quote:*

"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox):

"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."

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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."

Suffice to say further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the present case.

9. In view of totality of factual matrix of the present case, the instant petition is allowed. Petitioner is ordered to be released on regular

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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.

10. 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.

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12. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
13. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

17.09.2024

Jasmine Kaur

(SUMEET GOEL)

JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No