

CRM-M-40043-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40043-2024 (O&M)

Date of Decision: 23.08.2024

DEEPAK

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sunny Namdev, Advocate for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

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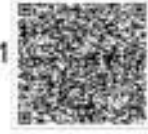
SUMEET GOEL, J. (Oral)

1. The instant petition has been filed on 12.08.2024 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.895 dated 26.11.2022, registered for the offences punishable under Sections 346, 363, 366-A and 376(2)(n) of IPC, 1860 and 6 of POCSO Act, 2012 at Police Station City Hansi, Haryana.

2. The FIR in question (as stated in the petition) reads as under:-

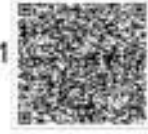


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“To. Mr. Chowki Incharge, Sisay Pul Chowki, Hansi. Subject: Regarding the search of Vandana (minor age 17 years) daughter of Shri Prem Singh resident outside Char Qutub Gate, Near Mirchunath's hut, Hansi Tehsil Hansi District Hisar. Sir, it is humbly requested that the applicant Sudesh wife of Shri Prem Singh resident outside Char Qutub Gate, near Mirchunath's hut, Hansi Tehsil Hansi District Hisar. I have a daughter named Vandana whose date of birth is 20-10-2005 who is a minor girl. My daughter studies in 12th class in Government Girls Senior Secondary School, Lal Sadak, Hansi. Today on 26-11-2022 at 10.00 am, my daughter Vandana went from home, at that time she was wearing a chocolate colour suit and pink coloured slippers on her feet. At that time I had gone to work. Vandana told my younger daughter that she was going to her friend's house to study. But she did not return home after that. When I returned from work, my younger daughter told me that Vandana had left home at 10 in the morning and had not returned yet. I inquired at my level among my relatives and her friends but could not find her whereabouts. She has also taken along with her a mobile number 9728037687, 9992085231 which are now switched off. My daughter is 5 feet tall, fair complexioned, has a long face. Her photo is attached. Hence, I request you to register an FIR for the missing of my minor daughter Vandana and trace her as soon as possible and hand her over to us. Date with thanks, Dated 26-11-2022 SD/- Sudesh Applicant, Sudesh wife of Shri Prem Singh resident outside Char Qutub Gate, near Mirchunath ki Kutiya, Hansi Tehsil Hansi District Hisar Mo. 9468141373 Action Police Today I am ASI present at the post that the complainant Sudesh above came to the post and presented the said application, which on the basis of the application was found to be the case of crime 346 IPC, a written complaint was lodged with the constable Jogendra 775/Arsal police station of Hansi, after which the registered case number should be informed through the slip. I am leaving with the complainant for the spot of incident. SD/- Jasbir Singh ASI 88 Sisai Bridge Hasi Date 26.11.2022 AT 08.40 PM Today Police Station above.”

The FIR was initially registered under Section 346 of IPC whereinafter, investigation was carried out, and offences under Sections 363, 366-A and 376(2)(n) of IPC, 1860 & Section 6 of POCSO Act, 2012 were added.

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 14.06.2023. Learned counsel for the petitioner has further argued that the statement made by the victim under Section 164 of Cr.P.C. on 17.12.2022 before JMIC, Hansi, Haryana reflects that no inculpatory statement has been made against the petitioner. Learned

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counsel for the petitioner has further argued that the petitioner has been falsely implicated into the FIR in question. 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 petitioner is an accused of having committed a serious offence including offence under Section 376(2)(n) of IPC and Section 6 of POCSO Act, 2012. A perusal of the statement made by the victim under Section 164 of Cr.P.C., indubitably, reflects that no inculpatory role has been attributed to the petitioner. However, a perusal of the FSL report dated 18.10.2023 (copy whereof was produced by the learned State counsel during the course of hearing) reads as under:

“The DNA examination (STR analysis) performed on the above mentioned items is sufficient to conclude that the victim (Item No.1) and accused (Item No.5) are the biological parents of the Foetus (Item No.2).”

Furthermore, the victim is yet to be examined as a prosecution witness. The weightage required to be attached to the statement made by the victim under Section 164 of Cr.P.C. on 17.12.2022 shall be adjudicated upon during the course of trial once the statement of the victim is recorded as a prosecution witness. Therefore, in the considered opinion of this Court, the petitioner is not entitled for grant of regular bail. Hence, the petition is dismissed.

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



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

23.08.2024

Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No