



CRM-M-41124-2024 (O&M)

213

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41124-2024 (O&M)

Date of Decision: 19.09.2024

ASHISH

.. Petitioner

Vs.

STATE OF HARYANA & ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Aditya Sanghi, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

Ms. Nanvi Gupta, Advocate for respondent No.2.

...

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483 BNSS for grant of regular bail to the petitioner in case bearing FIR No.171 dated 29.08.2023, registered for the offences punishable under Sections 341/365/506/376(2)(n)/354D/376(3) of IPC and Sections 4/6/12 of POCSO Act (subsequently, Section 376(3) IPC was deleted, however, Sections 376(2)(n)/354D/34 IPC and 12 POCSO Act were added by ld. Trial Court), at Police Station Bahu Akbarpur, Rohtak.

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 Sahib, Police Station Bahu Akbarpur, Rohtak. Sir, I am Anil son of Pratap is the resident of Nihana, District Rohtak. We are five siblings. My elder brother Vijendra has a daughter named Pooja who is 14 years old and is studying in class 10th, My brother's wife had gone somewhere when Pooja was 14 months old, since then Pooja lives with us. I bear the expenses of Pooja's education and I also take care of my daughter Pooja. Today on dated 29.08.23, my niece Pooja told that Ajay son of Bijendra of Village Nidana has been

**CRM-M-41124-2024 (O&M)**

harassing me for the past many days by blocking my path on motorcycle and when I got up to urinate around 11:30, the door of our house was open when I tried to close it. Ajay son of Bijendra came on his bike and got down from the bike and forced me to sit on the bike. I tried to ask for help but due to night, I could not see anyone in the street. Ajay took me to a room in the stadium and done wrong things against my will by raping me and said that if I told this to anyone, I would kill him. My niece Pooja told me all these things, who is quite scared and nervous. Strict action should be taken against Ajay son of Bijendra. SD/- Anil 9991081255 dated 29.08.23.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 02.09.2023. Learned counsel for the petitioner has submitted that the testimony of the victim has already been recorded and in the cross-examination, she has given a clean chit to the petitioner. In this regard, learned counsel for the petitioner has relied upon the cross-examination of the victim, relevant whereof reads as under:

“I am studying in 11th standard. I can read and write Hindi. I have not moved any complaint before the police. I have no complaint against accused Ajay and Ashish and they also did not do any wrong act against my person. Volunteered that I used to talk with them on mobile. It is correct that when I was taken to hospital by the police after registration of this case, disclosed before the Doctor on duty that I was given beatings by my father, brother as well as by my uncle in the intervening night of 28/29.08.2023.....”

Learned counsel for the petitioner has further submitted that the testimony of the complainant has also been recorded as a prosecution witness. 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. Learned counsel for respondent No.2 has vehemently opposed the grant of regular bail on the ground that the allegations made against the

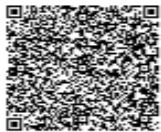
**CRM-M-41124-2024 (O&M)**

petitioner are serious in nature & hence he ought not to be granted 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 petitioner was arrested on 02.09.2023 whereinafter investigation was carried out & challan was presented on 17.10.2023. Total 32 prosecution witnesses have been cited out of which only 12 have been examined till date. The rival contention of the learned counsel for the parties; regarding the weightage required to be attached to the cross-examination of the victim (as relied upon by the learned counsel for the petitioner); 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 11.09.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 01 year and 08 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 present case.

8. In view of totality of factual matrix of the present case, the instant 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:-



CRM-M-41124-2024 (O&M)

- (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.

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 petitioner.

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.

19.09.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No