

2024:PHHC:132540



CRM-39646-2024 in/and
CRM-M-42757-2024 (O&M)
Date of Decision: 04.10.2024

....Petitioner

.... Respondent

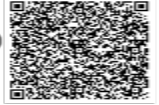
Ms. Deepshikha Chauhan, A.A.G., Haryana.

CRM-39646-2024

Heard.

In view of averments mentioned in the application, the same is allowed and the order dated 06.09.2024 is corrected to the extent that “it is submitted that subsequently the complainant had compromised the said FIR No. 42 dated 05.03.2024 with the accused therein” be read as “that the complainant had previously also registered an FIR No. 190 dated 29.06.2022 under Section 376-D IPC at Police Station City Pehowa, District Kurukshetra against some other persons which was compromised by her with the accused therein”.

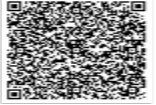
The petitioner has filed the present second petition under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (Section 439



Cr.P.C.) for the grant of regular bail to the petitioner in case bearing FIR No.0042 dated 05.03.2024 (Annexure P-1) under Section 328, 354 and Section 376 IPC (Section 377 IPC has been deleted) registered at Police Station Raipur Rani, District Panchkula.

Learned counsel for the petitioner *inter alia* submits that the present FIR (Annexure P-1) has been registered on the basis of the statement made by the victim herself; wherein allegations were made against the petitioner under Section 377 IPC. It is submitted that upon investigation, the said allegation was found to be false and therefore, Section 377 IPC was deleted from the present FIR. Thereafter, the statement of the victim was recorded under Section 164 Cr.P.C. by learned JMIC Panchkula in which she greatly improved upon her previous version in the FIR, and attempted to falsely implicate the petitioner under Section 376 IPC. Learned counsel contends that the complainant is habitual of registering false FIR against innocent persons. In this regard, reference is made to FIR No.75 dated 08.09.2023 under Section 370, 376(2)(n), 120-B, of IPC & 6 of POCSO Act and Section 5 of Immoral Trafficking Act registered at Women Police Station, Kurukshetra; and FIR No. 190 dated 29.06.2022 under Section 376-D of IPC registered at PS Pehowa, District Kurukshetra registered by the complainant against other accused persons therein in which cancellation report has been filed after investigation. It is accordingly submitted that the petitioner has been falsely implicated in the present case.

It is further pointed out that in the FIR, there is another allegation that the petitioner had forced the complainant to consume some



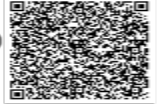
intoxicant tablets. However, as per the MLR dated 04.03.2024, no poisonous substance was reported in the samples collected from the complainant.

Learned counsel for the petitioner further points out that the complainant is now not appearing before the learned trial Court and as such fresh summon has been issued against the complainant vide order dated 30.09.2024.

Learned counsel for the petitioner further submits that the petitioner has been in custody since 06.03.2024 as undertrial. No useful purpose would be served by further detention of the petitioner in custody. Thus, it is prayed that the present petition may be allowed and the petitioner be released on regular bail.

Learned counsel for the State opposes prayer made on behalf of the petitioner; and on instructions from L/ASI Renu Bala, informs that the heinous crime has been committed against the complainant and, therefore, the petitioner be not released on bail. Learned counsel, on instructions again, admits that FIR No.75 dated 08.09.2023 under Section 370, 376(2)(n), 120-B, of IPC & 6 of POCSO Act and Section 5 of Immoral Trafficking Act registered at Women Police Station, Kurukshetra; and FIR No. 190 dated 29.06.2022 under Section 376-D of IPC registered at PS Pehowa, District Kurukshetra have been registered by the complainant. However, upon investigation, both these FIRs have been canceled as there was no truth found in the allegations made by the complainant.

Learned counsel for the State, further on instructions,



informs that out of 14 witnesses, none has been examined so far; and the next date of hearing before the learned trial Court is 14.11.2024.

Learned counsel for the State files custody certificate dated 03.10.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 06 months and 28 days. As per the said custody certificate, the petitioner was also involved in two more cases i.e. FIR No. 1120/2017 dated N/A under Section 325 IPC at Police Station Sadar Karnal, Karnal; and another FIR No. 36/2017 dated N/A under Section 182 IPC at Police Station Sadar Karnal, Karnal. However, the petitioner is on bail in both these cases.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case including: a) the custody period of 06 months and 28 days undergone by the petitioner as an undertrial; b) and out of total 14 witnesses, none has been examined so far and, therefore, the conclusion of trial will take considerable time and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Raj Kumar S/o Ram Kishan, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.



Pending application, if any, stands disposed of.

04.10.2024

Divyanshi

Whether speaking/reasoned:
Whether reportable:

(NIDHI GUPTA)
JUDGE

Yes/No
Yes/No