



CRM-M-42919-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42919-2024 (O&M)

Date of Decision: 17.09.2024

SHIV NARAYAN ALIAS ASHISH

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Ajay Kripal Singh, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

...

SUMEET GOEL, J. (Oral)

CRM-36774-2024

Application is allowed, as prayed for, subject to all just exceptions. Annexures P-11 and P-12 are taken on record.

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1. Present petition has been filed under Section 483 BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No.503 dated 16.08.2023, registered for the offences punishable under Sections 376(2) (N), 365, 506, 342 of IPC and Sections 6 and 21 of POCSO Act at Police Station Bhiwani Sadar, District Bhiwani.

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

“Brief facts of the case are that on 16.08.2023 I L/SI Suman was present in Police Station City Bhiwani, where by a telephonic call of SHO was received to come to investigate a POCSO matter. Upon receiving the message L/SI Suman came to the police station whereby the prosecutrix and her guardians were present at police station Sadar Bhiwani. Whereby the

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prosecutrix told the summary that she was subject to physical assault on which she called the legal advisor Ms. Renu Bala, Advocate, Bhiwani. After coming the legal advisor the statement of prosecutrix was recorded which is as follows: Statement of Sonali daughter of Ramesh resident of village Chang, District Bhiwani, age 17 years. I have studied till 7th class. Stated that I am the resident of abovesaid address. I am living with my parents and younger sister at my house. My parents are laborers and usually live out of the house for work. Ashish son of Sh. Bittu is resident of my village. He is living with her mother and from last 08 months, I was in contact with Ashish and his mother. Ashish allured me in the false love affair and he called me at her house and developed physical relations forcibly. Thereafter, Ashish started blackmailing me and started developing physical relations. Regarding this, I complained to Sudesh mother of Ashish, however, she also threatened me and asked to do as her son says otherwise we will kill you and your family members. Being compelled, I kept obeying their instructions. On 13.08.2023, at about 10:00 AM in the morning, Ashish came at my house and he threatened me and took me in the field of Gujrani on his motorcycle. He committed wrong act with me there many times and tied my mother so that I could not scream. At 03:00 AM, he brought me at his house where her mother Sudesh was present. Ashish locked me in a room. On the next day in the morning, Ashish made telephonic call on the number of my mother and asked that your daughter is at my house and asked to come and take. When my mother, aunt and Tai came to take me then Ashish threatened my mother, aunt and Tai that if you and your daughter got registered any complaint against us then we will kill you. Therefore, it is requested to you Sir that strict legal action may kindly be taken against the accused persons. Thanking You. Sd/- Renu Bala Saini Adv. CH. No.161 Mob. No.946601086 Sd/- Kailash. Sd/- Suman Rani.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 21.08.2023. Learned counsel for the petitioner has further argued that the entire prosecution evidence has been led and thus there is no chance of the petitioner interfering with the proceedings of the trial. Learned counsel for the petitioner has referred, *in extenso*, to the testimony of the victim (especially cross-examination therein) and has submitted that the mark D-1 and mark D-2 clearly show that the victim had

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left her home on her own accord and there was consensual relationship between the petitioner and the victim. 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 was arrested on 21.08.2023 whereinafter investigation was carried out & challan was presented on 25.09.2023. It is not in dispute that all prosecution witnesses stand recorded. Therefore, it can be safely inferred, at this stage that there is no chance of the petitioner interfering with the process of trial. 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 the relevance/weightage required to be attached to mark D-1 and mark D-2 put to the victim into the cross-examination; 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 prosecution evidence. It is also worth noticing that once the entire prosecution evidence has been led, the accused has an indefeasible right (in accordance with law) to lead defence evidence which cannot be easily discarded. As per the custody certificate dated 16.09.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 01 year and 23 days. As per the said

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year 2021 under Sections 148, 149, 323, 427, 506 of IPC but this factum by itself cannot be sufficient to decline the grant of regular bail to the petitioner in the instant case. Suffice to say further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the present case.

7. 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:-

- (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.



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(vii) The petitioner shall not in any manner try to delay the trial.

8. 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.

9. Ordered accordingly.

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

11. 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