



CRM-M-44045 of 2024

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M-44045 of 2024
Date of Decision: 21.11.2024

Pawan Sharma

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. L.S. Lakhanpal, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Manisha Batra, J.(Oral)

1. Prayer in the present petition which is the second petition filed by the petitioner under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short as 'BNSS') is for grant of regular bail to the petitioner in case FIR No.721 dated 12.10.2023 under Sections 377, 323, 506, 34 of the IPC, 1860 and Section 18(d) of the Transgender Persons (Protection of Rights) Act, 2019, registered at Police Station Palla, District Faridabad. His previous bail petition had been dismissed, vide order dated 22.05.2024 as passed in CRM-M-8708-2024.

2. The petitioner has booked for commission of aforementioned offences on the allegations that on 09.10.2023, he had committed act of carnal intercourse against the order of the nature with the complainant who is a transgender person and had also caused sexual abuse and physical injuries to him. The petitioner had been arrested on 15.10.2023 and is facing

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trial.

3. It is argued by learned counsel for the petitioner that the petitioner has been falsely implicated in this case. Out of 24 prosecution witnesses, only 13 have been examined so far. The trial is likely to take time. He further submits that the petitioner is in custody since long. No useful purpose would be served by detaining him behind the bars anymore. The extended period of incarceration is a substantive change in the circumstances since the dismissal of the previous petition. While stressing that the petition is maintainable, it is urged that the same deserves to be allowed.

4. Status report has been filed by the learned State counsel. It is submitted by him that the previous petition as filed by the petitioner had been dismissed on merit. The petitioner had taken all the pleas as taken in this petition therein also. There is no substantive change in the circumstances since the dismissal of the previous petition as the statement of the victim had already been recorded when the order dated 22.05.2024 had been passed by this Court. Therefore, it is argued that the petition is liable to be dismissed on the ground of maintainability itself.

5. The previous petition for grant of regular bail as filed by the petitioner had been dismissed on 22.05.2024. The instant petition has been filed within a period of four months of dismissal of the said petition. It is well settled proposition of law that when successive bail applications come before the Court, the Court should be very cautious while considering the same. Successive bail applications can be entertained by the Court when some substantial change is established by the accused thereby making an



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State of Maharashtra Vs. Captain Buddhikota Subha Rao, AIR 1989 Supreme Court, 2292, wherein it was observed so and it was further held that the Court should not pass an order of release of an accused on bail in successive bail application merely establishing some cosmetic change between time gap of two applications. There must be some drastic change during the period between two applications. Reference can also be made in a judgment passed by Division Bench of Allahabad High Court in the case of '*Anees Miya Vs. State of U.P.*' 2018(5) ADJ 851 in CRA-S-3495-2009 wherein it was observed that mere long period of incarceration in jail by itself will not make out a case for grant of any indulgence; and to '*Parmod Kumar Saxena Vs. Union of India and others*', 2008(63) ACC 115 wherein it was held by the Hon'ble Supreme Court that mere long period of incarceration in jail would not be *per se* illegal. If the accused has committed offence, he has to remain behind bars. Such detention in jail even as an undertrial prisoner would not be violative of Article 21 of the Constitution of India. Similar observations have been made by the Allahabad High Court in the case of '*Dr. Naimish Trivedi Vs. State of U.P.*' 2020(12) ILR Allahabad 249.

6. I have heard learned counsel for the parties at length and perused the material placed on record.

7. On perusal of the material available on record, I am of the considered opinion that the petitioner has failed to point out any substantive or specious change in the circumstances ever since the date of disposal of the first bail petition. As a matter of fact, all the grounds which have been taken in this petition and the material shown to this Court, has already been

considered by this Court while rejecting the bail petition of the petitioner as

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on 22.05.2024. So far as the argument that the petitioner has undergone a long period of incarceration of 01 year is concerned, this Court is of the view that keeping in view the nature of allegations levelled against the petitioner qua commission of offence punishable under Section 377 of IPC which is punishable upto imprisonment for life and in the light of the facts and circumstances of the case, the petitioner is not entitled to be released on bail on that ground.

8. In view of the discussion as made above, but without meaning to make any comment on the merits of the case, I am of the considered opinion that the petition does not deserve to be allowed. Hence, the same is dismissed.

21.11.2024*D.Bansal***(MANISHA BATRA)
JUDGE**

Whether speaking/ reasoned :	Yes/ No
Whether Reportable :	Yes/ No