

CRM-M-44532 of 2024

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

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CRM-M-44532 of 2024

DATE OF DECISION :- 13.09.2024

Nitin Mishra

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Shailender Singh, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

SUMEET GOEL, J. (Oral)

The instant petition has been filed on 04.09.2024 under Section 439 of Cr.P.C, 1973 for grant of regular bail.

As per the judgment rendered by this Court titled '*Abhishek Jain Versus State of U.T. Chandigarh and another*' (CRM-M-31808 of 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 BNSS, 2023.

1. Present petition has been filed for grant of regular bail to the petitioner in case bearing FIR No.63 dated 05.02.2024, registered for the offences punishable under Section 376(2)(n) of IPC at Police Station Sector-8, District Faridabad, Haryana.



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

“To, Mr. SHO Sahib, Police Station Sector 8 Faridabad Sir, it is requested that I am Rakhi daughter of Ajay Kumar R/o, village Tarapur district Munger PS Tarapur Bihar at present tenant at Shyam Colony 100 feet Road house No. 36, near IDBI Bank Ballabgarh. I used to work in India forge company YMCA Chowk Sector 6 Ballabgarh. I have worked in India forge company from May 2023 to October 2023. There I met Nitin Mishra, son of Shyam Shankar, resident of Bareilly, Uttar Pradesh. Nitin Mishra also worked in the same company, then we both started talking and Nitin used to ask me to get married, then one day on 15th October 2023 Nitin called me to oyo hotel La casa Residency near YMCA Chowk Ballabgarh on the pretext of marriage and made physical relations with me there. Then Nitin called me several times to the same Oyo hotel. Nitin had forced physical relations with me for the last time on 19 January 2024. When I did not get my periods for two months, I checked with the kit and found out that I was pregnant. I used to talk to Nitin on his mobile number 8882944685 and on my mobile number 9315920475. Nitin has done wrong to me. Legal action should be taken against Nitin. Rakhi Rakhi 9315920475.8745038508 05-02-2024. Today at Police Station Complainant namely Rakhi came to the present police station and presented a written application which was found to be a crime under Section 376 (2) (N) IPC, case was registered against the above accused at Police Station Sector 8. After registering FIR, the special report of the case is being sent to the service of Special Constable Imran 973/FIR, Area Magistrate or other officers. Note: Due to lack of ID of CCTNS P/SI NIDHI, the case was registered in the presence of the lady officer. Note: FIR was filed late due to server being down.”



3. Learned counsel for the petitioner has submitted that the petitioner is in custody since 31.03.2024. Learned counsel has further submitted that there was consensual relationship earlier between the petitioner and the victim which turned sour & on this account the FIR was got registered falsely against the petitioner. Learned counsel for the petitioner has further submitted that later on a settlement/compromise has since been entered between the parties which fact is decipherable from the affidavit dated 16.07.2024 sworn in by the complainant (copy whereof as been appended as Annexure P-2 with the instant petition). In this view of the matter, learned counsel has prayed for grant of regular bail.

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. Learned State counsel seeks to place on record custody certificate dated 12.09.2024 in Court, which is taken on record.

5. Mr. Pranshul Dhull, Advocate has filed vakalatnama for the complainant. The same be taken on record.

Learned counsel for the complainant/victim has ratified the veracity of affidavit dated 16.07.2024 (copy whereof as been appended as Annexure P-2 with the instant petition).

6. I have heard counsel for the parties and have gone through the available records of the case.

7. The petitioner was arrested on 31.03.2024 whereinafter investigation was carried out and challan stands presented on 13.05.2024. Total 22 prosecution witnesses have been cited and none has been examined till date. Therefore, it is indubitable that the culmination of the trial will take



its own time. The rival contention of learned counsel for the parties; as to whether there was consensual relationship between the petitioner and the victim which turn sour later on and the FIR in question was got registered against the petitioner on this account & also the veracity/weightage required to be attached to the affidavit dated 16.07.2024 (copy whereof as been appended as Annexure P-2 with the instant petition); 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. As per custody certificate dated 12.09.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of 05 months and 13 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 case.

8. In view of above, the present 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 cell-phone 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.

(SUMEET GOEL)
JUDGE

13.09.2024
P.Singh

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