



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

224

**CRM-M No.45189 of 2024
Date of decision : 17.9.2024**

Shiva @ HardwariPetitioner
Versus
State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Angel Walia, Advocate, for the petitioner
Mr. Anup Singh, AAG, Punjab

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner in case FIR No.251 dated 26.9.2023, under Sections 363, 366, 34 of IPC (Section 376 of IPC and Section 4 of the POCSO Act, 2012 added later on), registered at Police Station Islamabad, District Amritsar.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

'Statement of Varinder Kumar aged 47 years son of Jagdish Raj resident of Street No. 05 New Dasmesh Nagar near Peer's lace Kot Khalsa Police Station Islamabad Amritsar. Stated that I am a resident of the said address and working as a private labourer. Today I have come with my wife Neetu Bala to file a statement that our daughter Kashish is 17 years old and my son's age is 10 years. My daughter Kashish is studying in class 9th in



Senior Secondary School Nawa Kot Gurbaksh Nagar. That on 25-9-23 at about 7.30 AM she went to school as usual, on the way Shiva alias Hardwari son of Dheeraj Kumar resident of Street No. 05 Near peer's Place New Dasmesh Nagar Kot Khalsa met my daughter Kasish and he forcibly took my daughter with him on the pretext of marrying her. When we came to know that it is our neighbor, the boy namely Goru, living in the street at the back of our street kept saying that I will bring your daughter back, but he has also deceived us. He did not bring our daughter Kasish back to us. I am submitting the copy of Aadhaar card of my daughter Kasish. Boy Shiva alias Hardwari has taken our daughter Kasish, legal action should be taken. Statement has been heard. OK. Sd/- Varinder Kumar'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 26.9.2023. Learned counsel has further argued that the victim, while making statement under Section 164 of Cr.P.C., had not made any inculpatory statement against the petitioner and has even refused to go along with her parents and thereafter sent to *Nari Niketan* but later on under the pressure of her family, she has testified against the petitioner while being examined as a prosecution witness. Learned counsel has further submitted that there were friendly relations between the petitioner and the victim which were not to the liking of the family of the victim and hence, the petitioner has been falsely implicated in the FIR in question. Learned counsel has further argued that the petitioner is a young man aged 24 years with no criminal antecedents. Hence, regular bail is prayed for.

4. Learned State counsel has opposed the present petition by 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 17.9.2024 in Court, which is taken on record.

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

6. The petitioner was arrested on 26.9.2023 wherein after investigation was carried out and challan qua the petitioner was presented on 29.11.2023. Total 16 prosecution witnesses have been cited and culmination of the trial will take its own time. It is not in dispute that the victim already stands examined as a prosecution witness. The rival contention of learned counsel for the parties; as to whether there were friendly relations between the petitioner and the victim which were not to the liking of the family of the victim and on this account the petitioner was falsely implicated in the FIR in question & the adjudication/weightage required to be attached to the testimony of the victim (when examined as a prosecution witness) which are the statement made by her under Section 164 Cr.P.C. as also her denial to go with her parents after being recovered and instead being sent to *Nari Niketan*; 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 material 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 17.9.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of more than eleven months and



seventeen 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 present case.

7. 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/Illaqa Magistrate.
- (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.

(SUMEET GOEL)
JUDGE

17.9.2024
Ashwani

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No