



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

312

CRM-M-45268-2024

Date of decision: 23.10.2024

SUMIT KUMAR ALIAS KALU AND ANOTHER

....PETITIONERS

V/S

STATE OF PUNJAB

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. A.K. Khunger, Advocate,
for the petitioners.

Mr. Anup Singh, AAG, Punjab.

SUMEET GOEL, J. (ORAL)

1. The present petition has been filed under Section 483 of the BNSS, 2023 for the grant of regular bail to the petitioners in case bearing FIR No.0135 dated 25.07.2023 registered for the offences punishable under Sections 354-B of IPC and Sections 8 and 12 of POCSO Act, 2002 at Police Station City Jalalabad, District Fazilka.
2. The case set up in the FIR in question (as spelled out in the petition) is as follows:-

"Statement of Balvir Kaur wife of Sucha Singh son of Massa Singh, resident of Lalla Basti, Jalalabad, aged about 72 years, Mobile No. 84373-49457. Stated that I am resident of the above mentioned address and doing the household work. My marriage was solemnized approximately 50 years ago with Sucha Singh son of Massa Singh, resident of Lalla Basti, Jalalabad. I have one son and one daughter. My son Tarsem Singh have four children, but my son Tarsem Singh had been expired about two and a half years ago and my daughter in law Gurmeet



Kaur had gone away after leaving her children and I myself have been doing nutrition my grandsons and granddaughter & my granddaughter Komal cannot move. Sumit Kumar alias Kalu son of Ram Lal and Rahul Kumar son of Ram Lal, residents of Lalla Basti, Jalalabad are our neighbours and being neighbourer, they are usually on visiting terms at our house. On 23.07.2023, it would be at about 09:30 PM as when due to some work, I had gone to the house of my neighbourers, then above mentioned Sumit Kumar and Rahul Kumar came to our house. My granddaughter Komal was alone in the house and the above mentioned Rahul Kumar and Sumit Kumar started committing eve teasing with my daughter Komal and started doing obscene activities and put off the clothes of my granddaughter Komal. On hearing the commotion of my granddaughter Komal, I ran towards the house, then on seeing me, Rahul Kumar and Sumit Kumar fled away from the spot. My granddaughter being afraid narrated the entire episode to me, on which I got admitted my granddaughter Komal at Civil Hospital, Jalalabad. My granddaughter being afraid and confused cannot make her statement. Appropriate legal action may kindly be taken against the above mentioned Rahul Kumar and Sumit Kumar. The statement has been got recorded, heard, the same is correct. RTI Balvir Kaur above. Statement verified by Sd/- Makhan Singh son of Pyara Singh, resident of Lalla Basti (Paternal uncle). Attested Sd/- Amarjeet Kaur, SI, Police Station City Jalalabad, dated 25.07.2023. POLICE PROCEEDING: Today myself SI was present at Police Station Amir Khas, then a phone call of MHC, Police Station City Jalalabad was received that girl Komal daughter of Tarsem Singh, resident of Lalla Basti, Jalalabad is admitted at Civil Hospital, Jalalabad, reach for taking action, on which myself SI reached at Civil Hospital Jalalabad, where ASI Buta Singh 608/FZK, S/LC Seema Varval 433, SC Sandeep Kumar 392, PHG Nachhattar Singh 7590, PHG Jharmal Singh 7487 met present, where ASI Buta Singh handed over ruqa bearing No. 804, dated 24.07.2023 in respect of Komal daughter of Tarsem Singh, resident of Lalla Basti, Jalalabad to me, on which myself SI along with the companion officials in order to procure the statement of the above mentioned girl Komal Rani reached in the ward, where the girl Komal along with her grandmother Balvir Kaur and other relatives met present, where the above mentioned Balvir Kaur got recorded her above mentioned statement before me, after writing whose statement, the same was read over, who after hearing the statement, after admitting the same to be correct appended her right thumb impression under the statement. The statement was verified by her above mentioned paternal uncle Makhan Singh. Myself SI attested the statement. From the contents of the statement, the commission of offence under Section 354-B IPC and Sections 8, 12 POCSO Act is made out, on which the original statement along with ruqa regarding registration of case is handed over to ASI Buta Singh, who has been directed that the action of the case may be set into motion. After registering the case FIR number may be informed. Special reports may be issued. Information may be given to the PCR Fazilka. Myself SI departs towards genuine deployment. Sd/- Amarjeet Kaur SI, Police Station City Jalalabad dated 25.07.2023. In the area of Civil Hospital, Jalalabad AT 09:00 PM. Today at the police station: Upon receipt of the above mentioned statement, after registering the above mentioned case for the above mentioned offence against the above mentioned accused persons, I hereby hand over the copy of the FIR along with original statement for further action to myself ASI and after



issuing the special reports, the same are being sent through C-II Lekh Raj 534/Fazilka to the Area Magistrate as well as Senior Officers. Information is being given to the PCR Fazilka through Email."

3. Learned counsel for the petitioners has argued that the petitioners are in custody since 26.07.2023. Learned counsel for the petitioners has further submitted that the petitioners have been falsely implicated into the FIR in question. It has been further argued that the testimony of the prime prosecution witnesses namely the complainant and the victim already stands recorded and, thus, there is no chance of the petitioners interfering with the relevant/important prosecution evidence. Learned counsel for the petitioners has further submitted that the age of the victim has also been disputed and hence it is a matter of trial whether Sections 8/12 of POCSO Act, can be invoked against the petitioners. Hence, regular bail is prayed for.

4. Learned counsel for the State has opposed the present petition by arguing that the allegations raised against the petitioners are serious in nature and, thus, they petitioners do 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 petitioners have arrested on 26.07.2023 whereinafter investigation was carried out & challan was presented on 21.09.2023. Total 17 prosecution witnesses have been cited and, as on today only 02 have been examined. It is not in dispute that the prime prosecution witnesses namely the complainant (grandmother of the victim) as also of the victim



stand examined. The rival contention of learned counsel for the parties; as to whether the petitioners have been falsely implicated into the FIR in question & as to whether the offence under Sections 8/12 of POCSO Act, is made out against the petitioners; 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 case of the either parties. Nothing tangible has been brought forward to indicate the likelihood of the petitioners absconding from the process of justice or interfering with the remaining prosecution evidence. As per the custody certificate dated 23.10.2024 filed by the learned State counsel in Court today, the petitioners have suffered incarceration for about 01 year 02 months and 27 days & are not shown to be involved in any other case.

The petition in hand is the fourth bail petition preferred on behalf of the petitioners. The first one was dismissed on withdrawn on 13.02.2024 with liberty to file afresh with better particulars. Thereafter, 18.04.2024, the said bail petition was dismissed as withdrawn since the testimony of the victim was not recorded at that time. Thereafter, on 28.08.2024 the 3rd bail petition was dismissed as withdrawn with liberty to file afresh after disclosing the complete particulars. In the instant bail petition, learned counsel for the petitioners has placed on record the MLR of the victim as also the statements of the witnesses namely recorded under Section 161 of Cr.P.C., 1973 by Makhan, Mandeep and Palak. The petitioners have further undergone incarceration of about 2 more months after the last bail petition was dismissed as withdrawn with liberty to file



afresh after disclosing the complete particulars. It appears that the trial is not likely to culminate in near future. Considering the totality of the facts and circumstances of the case, this Court is inclined to consider the present petition (i.e. the 4th petition for grant of regular bail).

Suffice to say further detention of the petitioners as 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 learned 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 petitioners shall not mis-use the liberty granted.
- (ii) The petitioners shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioners shall not absent themselves on any date before the trial.
- (iv) The petitioners shall not commit any offence while on bail.
- (v) The petitioners shall deposit their passport, if any, with the trial Court.
- (vi) The petitioners shall give their cellphone numbers to the Investigating Officer/SHO of concerned Police Station and shall not change their cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioners 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 of.

(SUMEET GOEL)
JUDGE

October 23, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No