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

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**CRM-M-47422 of 2024
DATE OF DECISION :- 26.09.2024**

Harshit @ Harshit Tiwari

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Ms. Gursimran Walia, Advocate
for Mr. Baljeet Beniwal, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No. 265 dated 25.05.2023, registered for the offences punishable under Sections 323/506 of IPC and Sections 6,12,17 of POCSO Act at Police Station Saran, District Faridabad.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

“To SHO, Police Station Saran, District Faridabad, Subject -Application against the Priyanka, Janikesh, Pooja, Harshit, Kashish and other accused for taking Strict legal action. Respected sir, it is requested that I am the applicant Brajendu Kumar, son of Jagbandhu Das, resident of house number 3847. Parvatiya Colony, near Urmila School, Faridabad. My daughter Priyadarshini Das, whose age is about 17 years and is 12th pass. Prayer is that to you sir that Janikesh and Harshit has been raping my daughter for almost three years by blackmailing her. My daughter told me that Priyanka, Janikesh, Pooja, Harshit and their other associates repeatedly harass her by threatening to make her photos and videos viral and many of their associates harass her by calling from different numbers and Even when the daughter goes to school to study, they use to stop her way and threatened to kill her and her, there is repeatedly they follow a



gang of Priyanka, Janikesh, Pooja, Harshit, Kashish and their other associates who keep luring and minor blackmailing Janikesh and Harshit are girls and harassing my daughter by repeatedly doing obscene acts and keep sending obscene photos on Instagram. My daughter also told that Pooja, Kashish, Harshit me and Janikesh tell her that if you speak against us. If we take legal action, we will falsely implicate your parents and kidnap them and when my daughter goes to the examination center to give her paper, these above mentioned people keep harassing her even after going to the examination center and today Pooja and Kashish came to my house to take away my daughter forcefully and said that she will take your daughter away and if you do not send her then we will implicate you under false case, that Janikesh, Harshit, Last year Priyanka and Kashish kidnap my daughter from 7/10/2022 till 12/10/2020 and Janikesh and Harshit kept raping and beating my daughter and Priyanka and Kashish beat her several times and threatened kill her. Therefore, sir, it is requested that the strictest legal action should be taken against all the above mentioned applicant -Sd- accused. Thank you Brajendu Kumar Das resident mobile number 9560784485, 9354200310. Police Proceedings.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 15.07.2023. Learned counsel for the petitioner has further submitted that the role, at the most, attributed to the present petitioner is that he has helped the main accused in assaulting the victim, Learned counsel for the petitioner has further submitted that another FIR bearing No. 609 dated 08.10.2022 was registered under Section 363 of IPC at Police Station Mehrauli, Delhi wherein the victim (of the instant FIR) has made similar like allegations against another person but the same FIR was later on cancelled. Learned counsel for the petitioner has further submitted that the charges in the case were framed on 04.11.2023 but the trial is not progressing and culmination of the trial will take its own time as total 23 witnesses have cited. Learned counsel for the petitioner has further submitted that there are no criminal antecedent of the petitioner. 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 25.09.2024 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 15.07.2023 whereinafter investigation was carried out and challan stands presented on 07.10.2023. Charges in the present case were framed on 04.11.2023 and there are total 23 prosecution thus culmination of trial does not appear to be in near foresight. It would be apposite to refer herein to the judgement of Hon'ble Supreme Court in '**Javed Gulam Nabi Shaikh versus State of Maharashtra and another**' in Criminal Appeal No. 2787 of 2024, relevant whereof reads as under:-

"19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under [Article 21](#) of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. [Article 21](#) of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating [Article 21](#) of the Constitution."

The rival contention of learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question, the role attributed to the petitioner as also the factum/wieghtage required to be attached to

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the victim having got registered another FIR in Police Station Mehrauli, Delhi; 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 25.09.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of 01 year 02 month 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.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on interim 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.



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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.

(SUMEET GOEL)
JUDGE

26.09.2024
P.Singh

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