



CRM-M-48232-2024 (O&M)

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

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Date of Decision: 14.10.2024

AKHTAR

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Kuljinder S. Billing, Advocate and
Mr. Nitin Chaudhary, Advocate for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

Mr. Satish Chaudhary, Advocate for complainant.

...

SUMEET GOEL, J. (Oral)

CRM-39877-2024

Application is allowed, as prayed for, subject to all just exceptions. Annexures P-4 to P-10 are taken on record.

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1. Present petition has been filed under Section 483 BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No.02 dated 03.01.2023, registered for the offences punishable under Sections 363/366-A, 376-D, 450 and 506 of IPC and Section 6 of POCSO Act at Police Station Pinangwan, District Mewat (Nuh).

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



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“To, SHO, Pinangwa District Nuh. Subject: Complaint for legal action against 1. Akhtar son of Gurgan 2. Sabir son of Samshu resident of Gurganka (Jhimrawat) 3. Sakeel son of Dina resident of Partavas (Jhimrawat) Police Station Pinangwa regarding kidnapping and raping a girl namely Arjuman daughter of Jamal resident of Jhimrawat. Sir, it is requested that I am Jamal son of Bhullu, a permanent resident of village Jhimrawat Police Station Pinangwa, District Nuh. The circumstances are such that on 31.12.2022 at night it must have been around 11 o'clock my daughter Arjuman aged 16 years was sleeping inside her house then the above mentioned accused Akhtar son of Gurgan, Sabir son of Samshu, Shakeel son of Dina entered my house and forcibly took away my daughter. My daughter even raised an alarm but as my family members were asleep at night they could not hear her voice and the accused kidnapped the girl and took her away. When my wife woke up at around 12:30 a.m. and saw the girl, she was not inside the house. My wife informed me and then I woke up all the members of my family and started searching for my daughter in the village. While searching for the girl, I reached the said Akhtar son of Gurgan and heard the sound of my daughter crying. Then I and my son Rizwan and brother Saqir son of Mullu and Shamim son of Subhan all entered the house of the said accused Akhtar and the girl was found inside his house at about 2:30 a.m. and she was crying badly. We quietly brought our daughter from the house of accused Akhtar to our house at night and when we asked the girl, she told us that when she was sleeping, the accused forcibly picked her up and took her away at the house of accused Akhtar, the three accused Akhtar, Sabir and Shakeel raped her one by one against her will, and threatened to kill her if she told her family members about this. When a community-based panchayat was held, the accused could not even appear for the panchayat, and refused to attend it, so today I have come here with a request. Please take appropriate legal action, I would be highly grateful to you. Date 01.01-2023 AT 08.15 PM. Sd/ Jamal son of Bhullu applicant. Jamal son of Bhullu resident of village Jhimrawat police station Pinangawa, District Nuh, Mobile No. 9991029658.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 30.01.2024. Learned counsel for the petitioner has further argued that the petitioner has been falsely implicated into the FIR in question on account of a dispute between the petitioner/his family and the complainant/his family. Learned counsel for the petitioner has submitted

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that a perusal of the statement made by the victim under Section 161 of Cr.P.C. as also the statement made by the victim as a prosecution evidence before the trial Court on 04.09.2024 show that the victim was allegedly sleeping with her grandmother in her house when she was forcibly lifted by the petitioner from her house but her grandmother (*dadi*) has not been cited as a prosecution witness. Learned counsel for the petitioner has further argued that, as per the prosecution version, the victim was dragged for about 200 feet but no corresponding injury has been found in the MLR/medical evidence put forth by the prosecution. Thus, regular bail is prayed for.

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.

5. Learned counsel appearing for the complainant has vehemently opposed the grant of regular bail to the petitioner by arguing that the allegations made against the petitioner are serious in nature. Learned counsel for the complainant has argued that the testimony of the victim, when recorded as a prosecution witness, inspires confidence and thus the petitioner is clearly guilty of the offence as stated.

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

7. The petitioner was arrested on 30.01.2024 whereinafter investigation was carried out & challan was presented on 25.04.2024. Total 21 prosecution witnesses have been cited out of which only 4 witnesses have been examined till date. The rival contention of the learned counsel for the parties; as to whether the petitioner has been falsely implicated into the

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FIR in question on account of a dispute between the families of the petitioner and the complainant; the relevance of the grandmother (*dadi*) being not cited as a prosecution witness & the veracity of the victim not suffering any injury on account of her being allegedly dragged for 200 feet during the course of her forcible lifting; 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 remaining prosecution evidence. As per the custody certificate dated 30.09.2024 filed by the learned State counsel, the petitioner has suffered incarceration for about 08 months. As per the said custody certificate, the petitioner is said to be involved in other FIR(s) also. Indubitably, the antecedents of a person are required to be accounted for while considering a regular bail petition preferred by him. However, this factum cannot be a ground sufficient by itself, to decline the concession of regular bail to the petitioner in the FIR in question when a case is made out for grant of regular bail *qua* the FIR in question by ratiocinating upon the facts/circumstances of the said FIR. Reliance in this regard can be placed upon the judgment of the Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi vs. State of U.P. and another, 2012(1) R.C.R. (Criminal) 586***; a Division Bench judgment of the Hon'ble Calcutta High Court in case of ***Sridhar Das vs. State, 1998(2) R.C.R. (Criminal) 477*** & judgments of this Court in ***CRM-M-38822-2021*** titled as ***Akhilesh Singh vs. State of Haryana***, decided on 29.11.2021 and ***Balraj vs. State of Haryana, 1998(3) R.C.R. (Criminal) 191***. Suffice to say

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further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the present case.

8. 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 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 cellphone 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.



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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.

14.10.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No