

CRM-M-48253-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48253-2024 (O&M)
Date of Decision: 01.10.2024

ARJUN PAL

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Pranshul Dhull, Advocate for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

...

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483 BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No.595 dated 16.10.2023, registered for the offence punishable under Section 376 of IPC at Police Station Palam Vihar, Gurugram.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“Sir, the brief facts of the case are that on dated 16.10.2023, L/ASI Ranjit Kaur was present at Police Station that one complaint received at the Police Station, details of which are that, "to the SHO, Police Station Palam Vihar, Gurugram. Sir, I, Ekta D/o Ramesh Rawat, am R/o E-71, Moti Baag, New Delhi.110021. I booked a cab on dated 15.10.2023 which was bearing No.HR55-AR-6293 of Uber Company and was being driven by Arjun Pal. I was to go from my house to the house of my grandmother (maternal) at Nazafgarh and after going to some distance, the driver of the cab changed its location. Then from 05:00 PM he was taking me from here and there and he went to Railway Station with me and then he took me at some deserted place and he developed physical relations with me again and again without my consent. Then he got me sit in the car and left me

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towards Sheetla Mata Mandir. Then from there, I arranged another cab and returned home. Legal action may please be taken against him. For lodging complaint, I am submitting my written statement before the Advisor Raj Bala Madam. Sd/- Ekta 8076744492.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 07.11.2023. Learned counsel for the petitioner has submitted that the version of the complainant is not believable, there are major improvements in the version put forward by the complainant and the medical evidence does not support the case of the prosecution. Learned counsel for the petitioner has further submitted that the first bail petition preferred by the petitioner was withdrawn on 18.07.2024 whereinafter official witnesses have been examined. It is thus submitted that this factum that official witnesses have been examined is sufficient to consider the second (instant) bail petition of the petitioner.

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

6. It is pertinent to note herein that the petition in hand is the second regular bail petition preferred on behalf of the petitioner. The first petition for grant of regular bail by the petitioner (herein) was dismissed as withdrawn vide order dated 18.07.2024 wherein the following order was passed:

“At the outset, learned counsel for the petitioner seeks permission to withdraw the present petition at this stage.

Permission is granted. The present petition is dismissed as withdrawn at this stage.

Pending application(s), if any, shall also stand disposed off.”

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7. The petitioner was arrested on 07.11.2023 whereinafter investigation was carried out & challan was presented on 30.11.2023. Total 22 prosecution witnesses have been cited out of which 19 already stand examined. Earlier petition for grant of regular bail, presented by the petitioner was dismissed as withdrawn on 18.07.2024, and thereafter this present petition has been filed. There is no explanation forthcoming as to what is the change in circumstances, since the dismissal of the earlier (first) petition vide order dated 18.07.2024, which necessitated the filing of the present petition. In this regard, reference may be made to a judgment passed by this Hon'ble Court in the case of '**Rafiq Khan Vs. State of Haryana and another**', has held as follows:

"9. The paramount issue, in any plea for grant of regular bail, is the liberty of an individual. Indubitably, within our society and jurisprudence, liberty is a cherished foundational principle and has fundamental ascendancy over all other attributes of social order. Even within the framework of Constitution, this principle is made conspicuous, inter alia, in Article 21 of our Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. The Cr.P.C., 1973 is one such procedural law which permits curtailment of liberty of anti-social and anti-national elements. Yet, liberty of an individual, the accused, must not transgress the rights of another individual, the victim, in terms of right to dignified everyday life without any imminent fear or threat. Additionally, the rights of the collective of individuals viz. the State/Society at large, also cannot be neglected. Therefore, while countenancing the facts for considering the bail, the rights of the triad of accused, victim and the State (Society at large) ought to be entailed. Ergo, while considering a bail plea, the Court ought to take into account this core concept(s).

9.1 An analytical perusal of Cr.P.C. explicates that this statute does not contain any provision relatable to maintainability or otherwise of second/successive bail petitions, including one(s) seeking regular bail. Once there is no statutory prohibition provided for in law, a Court is not logically empowered to import into it such prohibitions, especially in case of codified and legislated law. It is trite law that Courts ought not to read a provision in codified law which has not been specifically provided for by the legislature especially when such reading results into deprivation of rights. The bar contained in Section 362 of Cr.P.C. can, by no stretch of legal imagination, be said to be barring the filing of second/successive regular bail petition.

9.2 The Hon'ble Supreme Court in case of Babu Singh case (supra) has held that rejection of a bail petition does not, by itself, forbid a Court from considering another one, later in point of time. Similar is the ratio decidendi of the judgment of Hon'ble Supreme



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Court in Kalyan Chandra Sarkar (supra). Ergo, it can be safely inferred that the decision of a Court qua regular bail petition is essentially an interlocutory order and hence the postulation of res judicata does not apply to its realm.

9.3 The issue that next craves attention is as to what are the factors/parameters for consideration of second/successive regular bail petition(s).

9.4. The concordant legal position is that the essential pre-requisite for consideration of second/successive regular petition is the material/substantial change in circumstances and factors of alike nature. Indubitably, the further period of incarceration suffered by the petitioner accused after rejection/withdrawal of first/earlier plea for bail, pace of trial, the witnesses turning hostile or not supporting prosecution case and changed medical condition(s) of accused would be pertinent factor(s). It goes without saying that these factors are only illustrative in nature and cannot by any means be said to be exhaustive.

9.5 No rigid or universal criterion can possibly be delineated to conclusively govern the exercise of judicial discretion, in determining, as to what would constitute as the above stated substantial change in circumstances. Factual flexibility, one additional or different fact, may cause a sea of difference. There is no gainsaying that each case has its own distinct and unique facts and, hence, exercise of such judicial power is best left to the judicial discretion of a Court, in accordance with the settled norms of our jurisprudence.

10. As an epilogue to the above discussion, the following principles emerge:

I Second/successive regular bail petition(s) filed is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II. Such second/successive regular bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.

III For the second/successive regular bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice. The metaphoric expression of seeking second/successive bail plea(s) ought not be abstracted into literal iterations of petition(s) without substantial, effective and consequential change in circumstances.

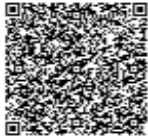
IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Making such an attempt is nothing but an utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive regular bail petition(s).

V In case a Court chooses to grant second/successive regular bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.”

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Thus, it is a settled law that the entertainment of successive bail petitions is contingent upon the petitioner demonstrating a palpable change in circumstances subsequent to the dismissal of the earlier petition. The petitioner bears the onerous burden of establishing substantial and compelling grounds, including novel evidence, altered circumstances or fresh development that were not considered previously. Mere iteration of identical grounds or arguments, *sans* novelty or material distinction, is insufficient. In the present case, except the factum of further incarceration of more than 2 months and the fact that the official witnesses have been examined, no substantial change in circumstances is forthcoming either from the averments made in the petition or the arguments advanced by the learned counsel for the petitioner. Undergoing further incarceration of more than 2 months cannot be said to be a substantial change in circumstances, especially, in the light of the fact that the offence with which the petitioner has been charged with (i.e. Section 376 of IPC) and is being tried, is punishable with imprisonment which may extend upto '*imprisonment for life*' and the total period, including this period of more than 2 months, for which the petitioner has been in custody in the present case is just 10 months and 23 days only. Further from the facts brought forward, it is absolutely clear that out of total 22 witnesses cited by the prosecution, 19 witnesses already stand examined. Thus, the petitioner has failed to discharge this burden of showing change in circumstances, which in itself is sufficient to invite the inevitable dismissal of the present petition.

8. In view of the above, no cause is made out to entertain the instant petition (second regular bail petition) preferred on behalf of the petitioner. Hence, the petition is dismissed.



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9. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
10. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

01.10.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No