

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
225

CRM-M No.48768 of 2024
Date of decision : 15.10.2024

Pawan KumarPetitioner
Versus
State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Ashish Handa, Advocate and
Mr. Pankaj Bains, Advocate, for the petitioner
Ms. Priyanka Sadar, AAG, Haryana

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.349 dated 31.5.2023, under Sections 323 and 506 of the IPC and Section 6 of POCSO Act, 2012, registered at Police Station Palla, Faridabad, 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 the SHO, police station Palla, Faridabad, Sir, It is requested that I, Neeru d/o Surender Singh, am resident of House No. 202, Street No. 02, Jagmal Enclave, Roshan Nagar, Faridabad. My age is 16 years. I am educated upto 9th Class. In the month of September, 2021, I had become a friend of one Mr. Pawan Kumar son of Sanjay Kumar Singh, resident of Vijay Nagar, Faridabad on Instagram. We both were wanted to marry with each other. Pawan was used to say me to make physical relation with him. At many times I said to Pawan that whenever I will become major of age 18 years, then I will marry you, then we will make sexual relations



with each other. Once upon in the month of November, 2021, Pawan came at my house at afternoon. Pawan saw that there is nobody at my house and Pawan made physical relation with me forcibly and said me that now you will have to solemnize marriage with me, otherwise you will be insulted in the society. After that Pawan took away me at Haridwar, where we had stayed for 02 days at some Dharamshala's accommodation. After that Pawan brought me at temple and filed my Maang in the presence of Statute of God. After that I and Pawan came at Ismylpur, Faridabad and took room on rent and started to reside as husband wife. But my mother Anju had got lodged a case/ FIR against Pawan Kumar, then Pawan Kumar had threatened me that if you will give statement against me, then I will kill you. Therefore I did not give statement against Pawan. Pawan used to threatening me that I am your husband and I can behave with you as per my desire. Pawan is use to beat me badly. Therefore upon huge harassment I told whole story to my mother. Upon which my mother has brought me at police station. Legal action may be taken against Pawan and justice may be done with me. Sd/- Neeru (9910883249, 9205702120).'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 19.6.2023. Learned counsel has further submitted that the petitioner and the victim had, in fact, married each other on 8.5.2022 (copy of the marriage certificate relied upon by the petitioner has appended as Annexure P-2 with the instant petition), and thus, the offences as alleged in the FIR are not made out against the petitioner. Learned counsel has further referred to the zimni orders passed by the trial Court on 22.3.2024, 26.4.2024, 24.5.2024, 24.7.2024 and 3.9.2024 to argue that the prosecution witnesses are repeatedly not turning up to have their testimonies recorded and the petitioner cannot be fastened with any liability for delay in culmination of the trial. Thus, 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 13.10.2024 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 19.6.2023 whereinafter investigation was carried out and challan was presented on 16.9.2023. Total 17 prosecution witnesses have been cited and culmination of trial, but of course, will take its own time. The rival contention of learned counsel for the parties; as to whether the offences as alleged against the petitioner were made out from the factual matrix of the lis and the weightage/veracity required to be attached to the marriage alleged to have been solemnized between the petitioner and the victim as also the weightage/veracity required to be attached to the marriage certificate dated 8.5.2022 (copy whereof has been appended as Annexure P-2 with the instant petition); 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. This Court has perused the zimni orders dated 22.3.2024, 26.4.2024, 24.5.2024, 24.7.2024 and 3.9.2024 with the assistance of learned counsel for the petitioner as also learned State counsel and perusal thereof clearly reflects that the prosecution witnesses are not repeatedly turning up to have their testimonies recorded and the petitioner cannot be



said to be liable for the same in any manner whatsoever.

7. At this stage, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in ***Criminal Appeal No.2787 of 2024*** titled as ***Javed Gulam Nabi Shaikh vs. State of Maharashtra and another***, decided on 03.07.2024; 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.'

As per custody certificate dated 3.10.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of about three months and twenty five 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.

8. 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.

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.

(SUMEET GOEL)
JUDGE

15.10.2024
Ashwani

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