

2024:PHHC:000458

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

203

CRM-M-50953-2023
Date of decision: 05.01.2024

Brijesh
State of Haryana

V/s

...Petitioner
...Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Parminder Singh, Advocate for the petitioner.
Ms. Priyanka Sadar, AAG Haryana.

SUMEET GOEL, J.

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.161 dated 17.02.2021, registered for the offences punishable under Sections 363, 365, 366, 376(2)(n) IPC and Section 6 of POCSO Act, 2012 at Police Station Old Industrial, District Panipat.
2. The case set up in the FIR in question is as follows:-
- “Sir, it is submitted that I Surjit wife of Sanjay r/o Hari Nagar, Panipat. I have three daughters and son. The name of my third number daughter is Sneha aged about 15 years. Today on 17.2.2021 at about 3 or 4 she went away without telling any one and we have uptill now made search, but she has not come back to her house. Her description is that Colour fair, face lengthy, sleek body, blue colour Suit worn by her with blue Pajami and wearing footwear. Her search may kindly be carried out.”*
3. Learned counsel for the petitioner has emphatically argued that there is no question of rape in the present case as the prosecutrix while recording her statement under Section 164 Cr.P.C. (Annexure P-2) before the Court deposed that the petitioner has neither abducted her nor committed any sexual assault. Moreover, the prosecutrix while appearing as PW-3 has not supported the prosecution case and has turned hostile. Learned counsel for petitioner further argues that in view of the testimony already on record

of the complainant and the prosecutrix, who have turned hostile, it does not appear to be a case of conviction and in all likelihood, trial is likely to result in acquittal of the petitioner. Learned counsel further submits that petitioner is in custody since 09.04.2021 & allegations against the petitioner are a matter of adjudication of trial. Thus, no useful purpose would be served by detaining the petitioner in custody any longer.

4. Learned counsel for the State has opposed the petition arguing that allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail. However, on a Court's query, learned State counsel does not controvert the fact that the material witnesses i.e. prosecutrix-PW-3 and complainant-PW-4 (mother of the prosecutrix) have turned hostile and have not supported the prosecution version.

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

6. Keeping in view the fact that the prosecutrix has not made any allegations of sexual assault in the statement made by her under Section 164 Cr.P.C. on 03.03.2021 (Annexure P-2) before JMIC, Panipat; the prosecutrix having resiled when examined as PW-3; the mother of the prosecutrix having resiled when examined as PW-4; the fact that petitioner is in custody since 09.04.2021, he having undergone more than 02 years and 08 months of incarceration & there being no tangible material on record to reflect likelihood of the petitioner absconding from process of justice or interfering with the prosecution evidence, the petitioner deserves to be enlarged on bail.

7. 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 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.

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

January 05, 2024
Ajay

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