



the mouth of the children and also makes them masturbate. After making them do wrong things, he also tells the children not to tell their mother about him, if they tell then I will throw them in the canal and in front of the truck. He has done such things many times before. He is addicted to drugs etc. We have a threat to our life and property from this person. Due to this, there is a big threat to the mental health of the children. I request you to please take appropriate action against him. I shall be very grateful to you. Thank you Names of children Chetna Girl age 10 years, Prince age 7 years Sd/ Monu Applicant Monu 8059435083.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 04.06.2023. Learned counsel has further argued that the challan in the case in hand was presented on 26.07.2023 and total 15 prosecution witnesses have been cited but only two prosecution witnesses have been examined. Learned counsel for the petitioner has further submitted that the complainant (who is the wife of the petitioner) is not coming forward to have her testimony recorded and hence, vide order dated 05.11.2024, the trial Court was constrained to issue bailable warrants against the complainant for ensuring her deposition as a prosecution witness. Learned counsel for the petitioner has further argued that, actually, the FIR in question has been got recorded by the complainant on account of a matrimonial dispute. Learned counsel for the petitioner has further argued that the complainant had earlier got one FIR No. 131 dated 03.12.2018 for offences under Sections 376AB IPC and Section 6 of POCSO Act registered at Police Station Women, Yamuna Nagar against the petitioner (herein) which resulted into acquittal vide judgment dated 09.02.2021 passed by Additional Sessions Judge (Fast Track Special Court Under POCSO Act),

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Yamuna Nagar at Jagadhari on account of the complainant (herein) as also the victim (therein) not supporting the case of the prosecution. 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 18.11.2024 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 04.06.2023 whereinafter investigation was carried out and challan stands presented on 26.07.2023. Total 15 prosecution witnesses have been cited out of which only two have been examined till date. It is not in dispute that the testimony of both the victim stand recorded as prosecution witnesses. The rival contention of learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question, whether genesis of the FIR is actually the matrimonial dispute between the petitioner and the complainant as also the effect of the judgment of acquittal dated 09.02.2021 passed by Additional Sessions Judge (Fast Track Special Court Under POCSO Act), Yamuna Nagar at Jagadhari in FIR No. 131 dated 03.12.2018 for offences under Sections 376AB IPC and Section 6 of POCSO Act registered at Police Station Women, Yamuna Nagar; 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

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been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence.

A perusal of the zimni order dated 05.11.2024 passed by the learned trial Court indicates that complainant has not turned up to get her testimony recorded despite having been served through the Court & hence the trial Court was constrained to issue bailable warrants qua her to ensure her deposition as a prosecution witness.

At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in a case of '***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another***' decided in ***Criminal Appeal No.2787 of 2024 arising out of SLP (Crl) No.3809 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."

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As per custody certificate dated 18.11.2024 filed by learned State counsel, the petitioner has suffered incarceration for a period of 01 year 05 months and 14 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 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/Illaq 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



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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

20.11.2024
P.Singh

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