

CRM-M-49912-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49912-2024 (O&M)

Date of Decision: 16.10.2024

GURCHARAN SINGH

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Gurdarshan Singh Sidhu, Advocate for the petitioner.

Ms. Priyanka Sadar, 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.266 dated 01.09.2020, registered for the offences punishable under Sections 363 and 366-A of IPC (Sections 376(2)(n), 506, 34, 120-B of IPC and Section 6 of POCSO Act added later on) at Police Station Ellenabad, District Sirsa.

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

“To, The S.H.O, P.S. Ellenabad. Subject:- Complaint for taking legal action against 1) Kalu son of Atma Singh, caste Bawari, R/o Village Chanan Khera, Tehsil Abohar, District Fazilka, 2) Gurcharan Singh son of Jagtar Singh, caste Bawari, resident of Village Pratap Nagar, Tehsil Ellenabad, District Sirsa for kidnapping my daughter Sapna, aged 14 years by alluring her. Sir, I respectfully submit that I, Ram Singh son of Sh. Jeet Singh, resident of Village Santa Wali, Tehsil Rania, District Sirsa, presently a resident of Dhani at Village Mithanpura, Tehsil Ellenabad and I submit before you that my daughter Sapna, aged 14 years was enticed by above mentioned accused in connivance with each other on 27.08.2020 at around 11:30 PM for running away with them. We came to know about the incident at around 12:00 AM when the girl was not found on her bed and we made enquiries in our neighbourhood but we have not found our daughter till date. Due to suspicion of the above-mentioned accused, we went to their house to inquire about her and found that they were also

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missing from their house. We have searched for my daughter everywhere but we have not found her anywhere. Above accused Kalu, son of Atma Singh, caste Bawari, R/o Village Chanan Khera, Tehsil Abohar, District Fazilka, 2) Gurcharan Singh son of Jagtar Singh, caste Bawari, resident Village Pratap Nagar, Tehsil Ellenabad, District Sirsa have taken away my daughter Sapna by alluring her. He is a criminal type of person. My minor daughter Sapna is in danger from him. We are afraid that the said Kalu can commit any untoward incident. Till now, we have been searching for our daughter at our own level but we have not found her. Therefore, it is prayed before you to search for my daughter Sapna and get my daughter Sapna released from the custody of accused Kalu, son of Atma Singh, caste Bawari, Village Chanan Khera, Tehsil Abohar, District Fazilka, 2) Gurcharan Singh son of Jagtar Singh, caste Bawari, resident of Village Pratap Nagar, Tehsil Ellenabad, District Sirsa and take strict legal action against above accused. It would be your act of great kindness. Thanking you. Sd/- Ram Singh, dated 01.09.2020. Place: Ellenabad. Applicant: Ram Singh son of Sh. Jeet Singh, resident of Village Santa Wali, Tehsil Rania, District Sirsa, presently a resident of Dhani at Village Mithanpura, Tehsil Ellenabad, District Sirsa, Mob. No.70820-65412. On receiving of said complaint at the police station, FIR No.266 dated 01.09.2020 under Sections 363/366-A/34 of IPC was registered at P.S. Ellenabad and the copies of the F.I.R were prepared with computer. The copies of the special report will be sent to Illaqa Magistrate and senior officers through emails. The copy of the police file along with the original application is in my custody and I ASI is proceeding towards place of occurrence.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 05.03.2024. Learned counsel for the petitioner has submitted that the prime allegations of sexual assault are against one Harjit @ Kalu and the present petitioner, namely, Gurcharan Singh is only stated to have accompanied/helped the said main accused. In order to buttress his arguments, learned counsel for the petitioner has referred to the statement made by the victim before the concerned Judicial Magistrate under Section 164 of Cr.P.C. on 02.01.2021 as also the statement of the victim recorded as PW-1 on 24.11.2021/07.02.2022. 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. I have heard counsel for the parties and have gone through the available records of the case.

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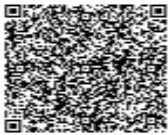
6. The petitioner was arrested on 05.03.2024 whereinafter investigation was carried out & challan was presented on 05.04.2024. Total 29 prosecution witnesses have been cited and culmination of the trial, but of course, will take its own time. The rival contention of the learned counsel for the parties; as to the specific role attributed to the petitioner and the weightage required to be attached to the testimony of the victim recorded under Section 164 of Cr.P.C. as also her statement (as a prosecution witness) on 24.11.2021/07.02.2022; 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. It has been brought to the notice of this Court that the petitioner has earlier been a proclaimed offender but this factum by itself cannot be construed as sufficient one to decline the concession of regular bail to the petitioner at this stage. 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. As per the custody certificate dated 16.10.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 07 months and 20 days. 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

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

7. 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



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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.

16.10.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No