

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

225

CRM-M-53942-2023

Date of decision: 24.04.2024

RICKY

....Petitioner

V/s

STATE OF U.T., CHANDIGARH

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr.Amit Kumar, Advocate,
for the petitioner.

Mr. Munish Bansal, P.P., U.T., Chandigarh.

SUMEET GOEL, J. (ORAL)

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.22 dated 30.01.2023 registered for the offences punishable under Sections 363 of IPC (Sections 323, 342, 354, 354-A, 354-B, 354-D, 366 of IPC and Section Section 10 of the Prevention of Children from Sexual Offences Act, 2012 added later on) at Police Station Sector 11, Chandigarh.
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.-11 Chd. Sir it is submitted that I Sushila W/o Sh. Ram Fal R / o J. No 482 near Shamshan Ghat Road Sec 25 Chd is residing at above said address and doing private job. I have 5 children, among them three are daughters and two sons and on 29.01.2023 at about 02:30 PM my younger daughter Preeti has gone without informing, we were searching her at our own but she did not come back yet. Her description is: Name

Preeti D / o Sh. Ram Fal R/o J. No 482 Sec 25 Chd Age 14 years, Height 4.1/2 Feet Wheatish Color, Studies in 8th Class, speaks hindi language, she was wearing jeans paint and Black & White Top and wear sleepers. My daughter be searched. Sd/- Sushila 7707995603”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 24.02.2023. Learned counsel for the petitioner has further argued that the testimony of the mother of the victim/complainant was recorded on 03.10.2023, perusal whereof reflects that the victim had left the house three days after she had been recovered in the FIR in question and is not traceable since then. Learned counsel for the petitioner has further referred to the zimni orders passed by the learned trial Court, especially orders dated 04.12.2023, 11.01.2024 & 12.03.2024, to indicate that repeatedly summons are being issued to the victim for recording of her testimony but she is not appearing in Court for recording of her testimony as a prosecution witness. Learned counsel for the petitioner has further referred to the status report dated 23.02.2024 filed by the learned Public Prosecutor, Chandigarh to argue that an FIR No.38 dated 24.02.2023 under Sections 363, 366 of IPC at Police Station Sector 11, Chandigarh has been registered since the victim has again gone missing. Thus, regular bail is prayed for.

4. Learned counsel for the State 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 regular bail.

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

6. The petitioner was arrested on 24.02.2023 whereinafter investigation was carried out & challan was presented on 27.03.2023. Total 20 prosecution witnesses have been cited out of which 06 witnesses already stand examined whereas 03 witnesses have been given up. Perusal of the zimni orders dated 04.12.2023, 11.01.2024 & 12.03.2024 passed by the learned trial Court as also the registration of an FIR No.38 dated 24.02.2023 under Sections 363, 366 of IPC at Police Station Sector 11, Chandigarh reflects that the victim is not coming forward to have her statement recorded as a prosecution witness. The delay in recording of the statement of the victim as a prosecution witness can, by no stretch of imagination, be attributed to the present petitioner. It is also not in dispute that the victim had refused to undergo medical examination. 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 remaining prosecution evidence. As per the custody certificate dated 24.04.2024 filed by the learned Public Prosecutor, the petitioner has suffered incarceration for about 01 year and two months. The petitioner is stated to be involved in FIR No.38 dated 24.02.2023 under Sections 363, 366 of IPC, at Police Station Sector 11, Chandigarh, in which it is stated that he is not required in pursuance of order dated 05.06.2023 passed by the learned JMIC, Chandigarh & another FIR No.273 of 2018 registered under Section 325/34 of IPC at Police Station, Sector 11, Chandigarh, in which the petitioner stands acquitted

vide order dated 13.06.2024 passed by the JMIC, Chandigarh. 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 learned 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/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

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

April 24, 2024
poonam

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