



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

216 **CRM-M-51277 of 2024**
DATE OF DECISION :- 23.10.2024

Roshan Ali **...Petitioner**

Versus

State of Haryana **...Respondent**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Sokeen Singh Verma, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483 of BNSS for grant of regular bail to the petitioner in case bearing FIR No.35 dated 03.04.2021, registered for the offences punishable under Sections 363, 366-A, 354, 376, 370, 120-B of IPC and Sections 4, 6 and 8 of POCSO, however, now charged under Sections 342, 363, 366, 376, 376-D, 354, 370, 372, 373, 468, 471, 120-B and 201 of IPC at Women Police Station Charkhi Dadri, District Charkhi Dadri.

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

"My name is Deepmala Chetriya. My father name is Kiran Chetriya. My mother name is Renu. My age is about 16 years. My village is Gela Ukhadi, District Teen Sukiya, Assam. On dated 30.03.2021, Roshan Ali, a resident of my village, whom I call brother, who is from Hijugudi- Highway Road, Assam, brought me to Delhi with him on the pretext of getting me the cleaning work, which I came with him without informing



anyone at home. After coming to Delhi, that person sent me with some madam, whose name-address I don't know, she brought me to Dadri. Then she put me in her house. From there I was sent to a room in the field with two unknown persons. I do not know that place. There were two other people in the farm room who molested me, then, I started crying. They left me they did not do any wrong to me. In the morning, on dated 01.04.2021 one of them, whose name I don't know, took me to a hotel in a secluded place. There he did the wrong act with me. After that he took me to that madam. I ran away as soon as I got a chance from there. I do not know the way here, I met two uncles on the way. Who brought me to the police station. On coming forward, I can identify those persons and madam. I want that action should be taken against them. My phone no. is 60007-03401, which is with madam. I studied in 6th class. Sd/- Deepmala Chatriya, the girl was presented before CWC member. Sd/- Suman Jangra, Charkhi Dadri, 03.04.2021.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 14.07.2021. Learned counsel for the petitioner has further argued that the petitioner has been falsely implicated into the FIR in question. Learned counsel for the petitioner has further referred, in extenso, to the testimony of PW4 (victim) to argue that the said prime witness of the prosecution has turned hostile and nothing incriminating has come against the petitioner which may warrant his conviction. Learned counsel for the petitioner has further relied upon the order passed by this Court granting bail to the co-accused bearing CRM-M-63192 of 2023 and CRM-M-24200 of 2023. 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 22.10.2024 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 14.07.2021 whereinafter investigation was carried out and challan stands presented on 10.07.2021. Total 63 prosecution witnesses have been cited out of which only 45 have been examined till date. It is not in dispute that all private prosecution witnesses stand examined. The rival contention of learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question & the weightage required to be attached to the testimony of the hostile witness (victim); 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.

The first bail petition preferred by the petitioner before this Court was dismissed as withdrawn on 30.05.2024. It is indubitable that despite passing of a further of about five months, the prosecution has not been able to conclude its evidence. In this regard, 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.”

As per custody certificate dated 22.10.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of about 03 years 02 months and 28 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 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

23.10.2024
P.Singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No