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CRM-M-51405-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51405-2024 (O&M)

Date of Decision: 23.10.2024

UMESH

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Gaurav Singla, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

...

SUMEET GOEL, J. (Oral)

The instant petition has been filed on 30.09.2024 under Section 439 of Cr.P.C., 1973 for grant of regular bail.

As per the judgment rendered by this Court titled '*Abhishek Jain Vs. State of U.T. Chandigarh and another*' (CRM-M-31808-2024) **2024PHHC085784**, the instant petition is not maintainable under Section 439 of Cr.P.C., 1973. However, keeping in view the entirety of facts and circumstances of the case especially that the instant petition pertains to regular bail, the instant petition is directed to be considered as a petition under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023.

1. Present petition has been filed for grant of regular bail to the petitioner in case bearing FIR No.0132 dated 10.03.2024, registered for the offences punishable under Section 363 of IPC, 1860 and Sections 4 and 17 of POCSO Act, 2012 (added later on as per the challan) at Police Station

Kotwali, District Faridabad.

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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 SHO, It is submitted that I, Mahender Sharma son of Late Sh. Harish Sharma, am resident of 2-L-28 NIT Faridabad. I am working in transport company. I am living separate from my wife. My wife Toshali Sharma Nawada is residing in Uttam Nagar. My daughter Ridhima Sharma (Ridhima Sharma) is studying in DYASTY School Sector-28 in 12th class, whose age is 16 years. My daughter today in the evening on 09.03.2024 at about 5.00 Pm had gone for tuition at 2-H-61 with her Bhabhi and thereafter at about 7.00 PM I had gone to bring my daughter from tuition from house No. 2H-61 NIT Faridabad, then Tuition Teacher of Ridhima Sharma said that today Ridhima Sharma had not come for tuition. That my daughter 20-25 days ago also without telling anything had gone in the night at 2.30 a.m. and then in the morning at 6.30 a.m. came under intoxication. I enquired from my daughter that with whom she had gone, then she said that she is under depression. Today again my daughter without telling had gone outside the tuition, with regard to which I had given information on 112 that my daughter is missing since evening. That at my own level I was searching her. Please search my daughter and may be handed over to me.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 29.04.2024. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated into the FIR in question. Learned counsel for the petitioner has further submitted that nothing inculpatory has come against the petitioner in the FIR as also the statement made by the victim under Section 164 of Cr.P.C. on 12.03.2024. Learned counsel for the petitioner has further submitted that, assuming *arguendo*, the version of the prosecution is taken to be correct, the only role attributed to the petitioner (in the statement made under Section 161 of Cr.P.C. by the victim) is that he has abetted the main accused to commit the assault. Thus, regular bail is prayed for.



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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.

6. The petitioner was arrested on 29.04.2024 whereinafter investigation was carried out & challan was presented on 28.06.2024. Total 26 prosecution witnesses have been cited and culmination of the trial, indubitably, will take its own time. The rival contention of the learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question; the exact role attributed to the petitioner and evidence in support thereof & the effect of the petitioner's name not figuring specifically in the FIR and also the statement made by the victim under Section 164 of Cr.P.C.; 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. As per the custody certificate dated 22.10.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 05 months and 24 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 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

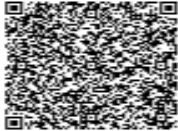
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concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (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/Illaqha 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.



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- 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.

23.10.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No