

CRM-M-52089 of 2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-52089 of 2024 (O&M)
DATE OF DECISION :- 12.11.2024

Sagger @ Sageer**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL****Present:-** Mr. Khalid Tauru, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No.113 dated 30.03.2024, registered for the offences punishable under Sections 363, 366, 376-D, 506, 34, 120-B of IPC and Section 6 of POCSO Act at Police Station Sadar Nuh, District Nuh.

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

“To SHO, PS Sadar Nuh. Subject: Application against 1. Saggur son of Aalam 2. Lala son of Zahid 3. Aham son of Zahid resident of village Ghasera Tehsil and PS Nuh regarding gang rape, kidnapping and abduction and threat to kill me and my minor daughter namely Khulsuma aged 17 years.

Respected Sir,

It is respectfully submitted here that I am Rasedan wife of Zakir resident of Village Ghasera. That on dated 29.03.2024 my daughter Khushluma at about 10 AM, minor aged about 17 years went to give some to food but she did not return till the end of evening. Then she returned to home around at 5.00 PM



in the evening in crying condition. That my daughter told me everything on phone. That I left my maternal house at 4.30 PM and thereafter the abovesaid accused gagged my mouth at the canal and with their common intention and took away me in the Verna Car and had put pistol on my face and said if you would make noise then they would kill her. Thereafter accused Saggarr took my daughter to KMP Road and committed forcibly rape with her, accused Ahmad closed her mouth and accused Lala shown the Pistol to me, When I tried to make shouting then they beaten me and threatened me that if she discloses anything to anyone, then they would her and her family. Therefore, it is requested the accused are dominated person in the village, kindly take strict legal action against her. Thanking you. Dated 30.03.2024 sd/- Rasidan wife of Zakir resident of Village Ghasera Tehsil Nuh Mobile-9050629776.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 12.06.2024. Learned counsel has further argued that the challan already stands presented in the matter on 26.08.2024 whereinafter charges have been framed on 09.10.2024. Leaned counsel for the petitioner has iterated that petitioner and the victim were in fact having an affair and had later on married each other on 27.04.2024. Learned counsel for the petitioner has placed reliance upon the marriage certificate dated 27.04.2024 (copy whereof has been appended as Annexure P-3 with the instant petition). Learned counsel for the petitioner has further argued that pursuant to the FIR in question having been registered against the petitioner, another FIR No. 153 dated 27.04.2024 was registered against the petitioner under Sections 363, 366-A, 34, 120-B of IPC in which the victim, while making a statement under Section 164 of Cr.P.C, has specifically said that she had left the lawful guardianship of her mother/parents on her own accord and had no grouse/grievance against the petitioner. Learned counsel for the petitioner

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has further submitted that the statement made by the victim under Section 164 of Cr.P.C qua the FIR in question was made under familial pressure. Learned counsel for the petitioner has further submitted that, in pursuance to the FIR No. 153 dated 27.04.2024 *ibid*, registered against the petitioner, in fact, action has been taken against the mother of the victim (complainant in both the FIRs in question). 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 11.11.2024 in Court, which is taken on record.

5. Mr. Charanjit Bakshi, Advocate with Mr. Amit Sahni, Advocate has filed memo of appearance for the complainant. The same be taken on record. Learned counsel for the complainant has vehemently opposed the grant of regular bail to the petitioner by arguing that the allegations made against the petitioner are serious in nature. Learned counsel for the complainant has further iterated that the statement made by the victim under Section 164 of Cr.P.C qua the FIR in question is inculpatory in nature against the petitioner & the statement made by the victim under Section 164 of Cr.P.C qua the other FIR i.e. FIR No. 153 dated 27.04.2024 is not to be read in favour of the petitioner qua the FIR in question.

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

7. The petitioner was arrested on 12.06.2024 whereinafter investigation was carried out and challan stands presented on 26.08.2024.

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Total 23 prosecution witnesses have been cited (as per instruction given to the learned State counsel by PSI Poonam) out of which none has been examined till date. A perusal of the statement made by the victim under Section 164 of Cr.P.C before the concerned Judicial Magistrate in respect of FIR No. 153 dated 27.04.2024 registered under Sections 363, 366-A, 34 of IPC at Police Station Sadar Nuh, District Mewat, Haryana indubitably reflects that the petitioner and the victim were having an affair. 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/veracity required to be attached to the statement made by the victim under Section 164 of of Cr.P.C in FIR No. 153 dated 27.04.2024 as regards the FIR in question, the effect of action having been taken against the complainant pursuant to the statement made by the victim under Section 164 of Cr.P.C in FIR No. 153 dated 27.04.2024; as also to the relevance of marriage certificate dated 27.04.2024 indicating marriage between the petitioner and the victim (copy whereof has been appended as Annexure P-3 with the instant petition); 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 custody certificate dated 11.11.2024 filed by learned State counsel, the petitioner has suffered incarceration for a period of about 04 months and 29 days. As per the said custody certificate, the petitioner is said to be involved in another FIR bearing No. 153 dated 27.04.2024 registered under Sections 363, 366-A, 34 of IPC at Police Station Sadar Nuh,



District Mewat, Haryana but the genesis of both the FIRs appear to be the same.

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 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 case.

8. 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.

9. 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.

10. Ordered accordingly.

11. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

12.11.2024
P.Singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No