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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53332-2024 (O&M)

Date of Decision: 04.11.2024

ROHIT KUMAR ALIAS SAURABH

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Vivek Singla, 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.156 dated 25.04.2024, registered for the offences punishable under Sections 376 and 506 of IPC at Police Station DLF, Sector 29, Gurugram.

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

“Contents: To the SHO-PS DLF Sector 29 Gurgaon Haryana.

Subject Application regarding rape/complaint against rape Saurabh Kushwaha URF Rohit Kumar. Sir, my name is Lalawapuii Rokbum D/o Rozanna aged 32 years permanent address H/no 121 Hauruang Town/Vill Hauruang District Lunglei 796701 who is presently residing in DLF Phase 4 sector 28 house no 1642 room no 6. Today dt 25th April 2024 at around 2.30 am I was with my friends Sharalin Lalhmuliani and Linda Lalremtluangi at my room packing vegetables that is arrived from my home town. While packing vegetables we are lack of plastic, so, I called Saurabh Kushwaha/Rohit Kumar to deliver us plastic, since he is the one whom I always asked to deliver everything I needs like groceries etc. at today morning around 3.00 AM Saraubh arrived to my room delivered me plastics. I welcome him in a good way since I have known him

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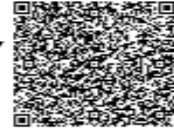
from 1 year and he is delivery boy and auto driver. While he is at my room me and Sharalin plan on drinking beer we asked Saurabh to buy beer because he used to deliver beer/liquor etc even at night but Saurabh, me and my friend went outside to take beer from the other guy that Saurabh knows, we went back home and continue packing vegetables and drinks beer. At around 7.30 am both my friends went back home and when my friends left me Saurabh starts threatening me with knife and raped me. So sir please I beg you to arrest this guy and take legal action this statement is recorded presence of legal advisor Shushma Nagar without any burden and pressure. Dated 25th April 2024. Yours Faithfully Lalawapuii Rokbum D/o Rozanna permanent address H/no 121 Hauruang Town/Vill Hauruang District Lunglei 796701, Present address DLF Phase 4 sector 28 house no 1642 room no 6 Ph No 6909703992.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 25.04.2024. 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 argued that the prime prosecution witness, namely, the victim has turned hostile (when examined as PW-2) & hence in all likelihood the trial is not likely to culminate into conviction. Thus, the 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.

6. The petitioner was arrested on 25.04.2024 whereinafter investigation was carried out & challan was presented on 24.05.2024. Total 17 prosecution witnesses have been cited out of which only 03 have been examined till date. Indubitably, the victim has been examined and she has turned hostile. The rival contention of the learned counsel for the parties; as

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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 remaining prosecution evidence. As per the custody certificate dated 02.11.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 06 months and 07 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 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.



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- (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/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.

04.11.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned Yes No

Whether reportable Yes No