



CRM-M-52348 of 2024 **1**

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

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DATE OF DECISION :- 28.10.2024

Sachin Kumar Rai **...Petitioner**

Versus

State of Punjab **...Respondent**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Bijender Dhankar, Advocate for the petitioner.

Mr. Anup Singh, AAG, Punjab.

SUMEET GOEL, J. (Oral)

The instant petition has been filed on 15.10.2024 under Section 439 of Cr.P.C, 1973 for grant of regular bail.

As per the judgment rendered by this Court titled '*Abhishek Jain Versus State of U.T. Chandigarh and another*' (CRM-M-31808 of 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 BNSS, 2023.

1. Present petition has been filed for grant of regular bail to the petitioner in case bearing FIR No.251 dated 03.12.2021, registered for the offences punishable under Sections 346 of IPC and Sections 363,366A,376 of IPC and Section 6 of POCSO Act (added later on) at Police Station Sahnewal, Police Commissionerate Ludhiana.

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



“Statement Ajane Pradeep Kumar Tiwari son of Mr. Krishna Nath Tiwari Resident of Village Supa Raja, Tehsil Nangat, Police Station Jugia SAHNEWAL, Udaipur, District Siddharth Nagar U.P. Hall Resident Tenant Gijadarpal's House, Street No. 1, Mukhtiar Nagar Luhara Ludhiana. Age about 47 years (Mobile No. 98763-80487) Declaration that I am a resident of the said address I am doing security job in KAY JAY FORGING PRIVATE LIMITED FACTORY at Focal Point Ludhiana. My wife's name is Pushpa Tiwari. I have 5 children, 2 girls and 3 boys My younger daughter, Bulbul Tiwari, aged about 17 years, was studying in Class IX at Government School Jaspal Bangar Ludhiana on 28-11-2021. Has not come back. So far we have been searching for Bulbul Tiwari on our own, but we could not find any trace of Bulbul Pandey. I suspect that to hide the existence of my girl Bulbul Tewari (aged about 17 years, height about 5 feet 2 inches, medium build, fair complexion, speaks Hindi Punjabi, wearing a green suit and boots on her feet). It has been kept hidden by an unknown person/person. Please take appropriate action, ji. I have written the statement, heard it, which is correct SD/-Pradeep Kumar Tiwari, verified by:- Pushpa Tiwari, Attested by:- Jagjeevan Singh Havaladar No: 3328 Chowki Kanganwal Police Station Sahnewal Ludhiana Date 03- 12-21 Conducted Police:- Today Constable Rajan No. 3940/Ludhi along with Man Havaladar was present at the post of PHG Chand Dev, then the said Pradeep Singh Tiwari along with his wife Pushpa Tiwari came and recorded his statement to Man Havaladar whose statement was written by Sepoy Rajan No: 3940/Ludhi: From his private laptop but typed and printed out through his private printer was read out to Pradeep Kumar Tiwari, who after hearing/understood his statement signed on his statement in English, which was attested by his wife Pushpa Tiwari, done by marking her right hand thumb, which was verified by Man Havaladar. At the outset, the case is found to be a crime under 346 IPC and the statement is sent to PHG Chand Dev No. 29252 to control room to register the case against the unknown person/persons. By registering the case, the number should be



made aware of the case. My mind is occupied with fellow employees including the havalder. IN jurisdiction of Chowki Kanganwal Ludhiana AT 2:15PM Correct/-Jagjeevan Singh Holdar No:3328 Chowki Kanganwal Police Station Sahnewal Ludhiana Dated 03-12-21 Today Police Station has received the statement and the case of the said crime has been registered against the said unknown person/persons. After registering the case, the original statement and the copy of the FIR are sent to the PHG Arinda Nijjad HC for verification. The control room was notified. Bandi Rupta No. 29 AT 3:30PM.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 14.04.2023. Learned counsel has further submitted that the victim had left the lawful guardianship on her own accord. Learned counsel for the petitioner has further argued that the petitioner and the victim have travelled to different places by way of public transport but no hue and cry were ever raised by the victim. Learned counsel for the petitioner has further submitted that the victim is more than 18 years of age and hence the offence under POCSO is not made out against the petitioner. Learned counsel for the petitioner has further argued that private witnesses already stand examined and thus there no likelihood of the petitioner tampering with the prosecution evidence. 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 27.10.2024 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.

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6. The petitioner was arrested on 14.04.2023 whereinafter investigation was carried out and challan stands presented on 30.05.2023. Total 17 prosecution witnesses have been cited out of which only six have been examined till date and thus it is indubitable that the culmination of the trial will take its own time. It is further not in dispute that all the private prosecution witnesses including the victim and the complainant/father of victim stand examined. The rival contention of learned counsel for the parties; as to whether the victim was a minor and hence the offences under the POCSO are not made out against the petitioner; the veracity/weightage required to be attached to the factum of the petitioner and the victim travelling together on public transport wherein the victim has allegedly not raised any hue and cry; 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 27.10.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of 01 year 06 months and 10 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.



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- (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

28.10.2024
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No