

2024:PHHC:024612

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

217

CRM-M-60947-2022

Date of decision: 22.02.2024

Mukesh Sahni

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr.Arjunveer Sharma, Advocate,
for the petitioner.

Mr.Anup Singh, AAG, Punjab assisted by
Sh. Gurdev Singh, DSP, Malerkotla.

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.255 dated 02.12.2021, registered for the offences punishable under Sections 363, 366-A of IPC at Police Station Tibba, District Ludhiana.

2. The case set up in the FIR in question is as follows:-

“Statement of resident Basora, Ajay Kumar Police son of Mhadeo Station Ghatmpur, district Kanpur, present residing as tenant in the house of Rampal, Street No.5, Mohalla Vijay Nagar, Tibba Road, Ludhiana. Aged around 34 years, mobile No.81465-27884. Stated that I am resident of above said address and is doing the job of labourer. I have three children i.e. 2 sons and one daughter. My daughter Nidhi is aged around 14/15 years. On 01.12.2021 at around 10:30 am she had gone out of house by saying to be going for buying the biscuit, but did not return, therefore, till today I and my family kept on looking for my daughter Nidhi, but could not find her. I have suspicion that some

unknown person has enticed away my daughter Nidhi by alluring her to solemnize marriage. Today alongwith my friend Sudhir Son of Chhedi Lal were coming to the police station for giving information, you have met. I shall produce proof regarding the age of my daughter lateron. I have got my statement recorded with you, heard, which is correct. LTI Ajay Kumar, witnessed by sd/- Sudhir, identified by Sd/- Kulwant Singh ASI, P.S. Tibba, Ludhiana, on dated 02.12.2021."

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 03.12.2021. Learned counsel for the petitioner has further submitted that the testimony of the victim and the complainant/father of the victim already stand recorded as PW-3 & PW-2 respectively. Learned counsel has referred, *in extenso*, to the statement dated 03.12.2021 made by the victim under Section 164 of Cr.P.C. as also her testimony recorded as prosecution witness (PW-3) to argue that the victim, in fact, had moved out of the guardianship of her father on her own accord. Thus, regular bail is prayed for.

4. Learned counsel for the State has opposed the present petition by arguing that the allegations raised are serious in nature and, thus, the petitioner does not deserve the concession of 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 03.12.2021 whereinafter investigation was carried out & challan was presented on 01.02.2022. Total 13 prosecution witnesses have been cited out of which the star/private prosecution witnesses i.e. the victim & complainant/father of

the victim already stand recorded. Thus culmination of the trial will take its own time. The rival contentions of the learned counsel for the parties as to, whether the offence under Section 363/366-A of IPC is made out against the petitioner or as to whether the victim had left the guardianship of her father on her own, accord 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. No tangible material 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 21.02.2024 filed by the learned State counsel, petitioner has suffered incarceration of more than 02 years and 02 months & is not shown to be involved in any other case. Suffice to say, further detention of the petitioner as an undertrial is not warranted.

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 learned 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/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.

(SUMEET GOEL)
JUDGE

February 22, 2024
poonam

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No