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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54869-2024 (O&M)

Date of Decision: 11.11.2024

GAURAV

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Virender Kumar, Advocate for the petitioner.

Ms. Ankita Ahuja, 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.114 dated 01.05.2023, registered for the offences punishable under Sections 363, 366-A and 366 of IPC and Section 6 of POCSO Act, at Police Station Munak, District Karnal.

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

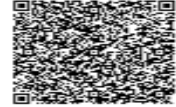
“Sir, The Fact of the case are that on dated 01.05.2023, Rani wife of Karampal presented a complaint in the police station to the effect that SHO sahib, I Rani wife of Karampal am resident of village Pabana Hasanpur. I have two daughters and one son. My eldest daughter Bhumi age about 15 years stayed at home after passing her matric. On 30.04.2023, after taking dinner, my eldest daughter Bhumi, slept in the room of her grand-mother. At 2.30am, when my mother-in-law Bimla got up. Bhumi was not found in the room. My mother-in-law woke us up and we searched in the neighbourhood. On checking CCTV footage from the camera installed in the neighbourhood, it was found that my daughter had gone with a boy. His name was revealed as Gaurav son of Subhash Gosai, resident of village Bal Rangran. We went to the house of that

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boy, but his family failed to give any satisfactory reply. We have suspicion that Gaurav has enticed away her daughter. Kindly trace out my daughter, whose physical appearance is like colour dark, height 5'2", round face, mark of injury on palm of left hand, age 15 years who is wearing pink colour lower-T-shirt. Mobile Phone No.999257812 of Gaurav is also switched off. Sd/ Rani Sir, The Fact of the case are that on dated 01.05.2023, Rani wife of Karampal presented a complaint in the police station to the effect that SHO sahib, I Rani wife of Karampal am resident of village Pabana Hasanpur. I have two daughters and one son. My eldest daughter Bhumi age about 15 years stayed at home after passing her matric. On 30.04.2023, after taking dinner, my eldest daughter Bhumi, slept in the room of her grand-mother. At 2.30am, when my mother-in-law Bimla got up. Bhumi was not found in the room. My mother-in-law woke us up and we searched in the neighbourhood. On checking CCTV footage from the camera installed in the neighbourhood, it was found that my daughter had gone with a boy. His name was revealed as Gaurav son of Subhash Gosai, resident of village Bal Rangran. We went to the house of that boy, but his family failed to give any satisfactory reply. We have suspicion that Gaurav has enticed away her daughter. Kindly trace out my daughter, whose physical appearance is like colour dark, height 5'2", round face, mark of injury on palm of left hand, age 15 years who is wearing pink colour lower-T-shirt. Mobile Phone No.999257812 of Gaurav is also switched off. Sd/ Rani."

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 13.05.2023. Learned counsel for the petitioner has further argued that there was consensual friendship between the petitioner and the victim which was not to the liking of the family of the victim & hence the petitioner has been falsely implicated into the FIR in question. Learned counsel for the petitioner has submitted that the victim had given a truthful version in her statement recorded under Section 164 of Cr.P.C. before the concerned Magistrate on 11.05.2023 but later on she has testified against the petitioner, when examined as a PW, on account of familial pressure. Learned counsel for the petitioner has iterated that the petitioner is a young man aged about 21 years with no criminal antecedents. 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 13.05.2023 whereinafter investigation was carried out & challan was presented on 31.07.2023. The rival contention of the learned counsel for the parties; as to whether there was consensual friendship between the petitioner and the victim; whether the petitioner has been falsely implicated into the FIR in question on account of such friendship not being to the liking of the family of the victim & the weightage required to be attached to the statement made by the victim under Section 164 of Cr.P.C. vis-a-vis the statement made by her as a prosecution witness; 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.

The challan in the instant case was presented on 31.07.2023 wherein total 20 prosecution witnesses have been cited but till today only 1 has been examined. Nothing has been brought forward to indicate that the non-culmination of the trial can be attributed to the petitioner. At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in a case of '*Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another*' decided in Criminal Appeal No.2787 of



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2024 arising out of SLP (Crl) No.3809 of 2024, relevant whereof reads as under:-

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect, may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

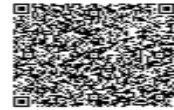
19 If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20 We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly. howsoever stringent the penal law may be.

21 We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.”

As per the custody certificate dated 09.11.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 01 year, 05 months and 27 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.

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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

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

11.11.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No