

2024:PHHC:031296

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

221

CRM-M-59088-2023
Date of decision: 05.03.2024

GURPREET SINGH @ GORA

....Petitioner

V/s

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Riffi Bala Birla, Advocate,
for the petitioner.

Mr. Anup Singh, AAG, Punjab.

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.47 dated 24.04.2023 registered for the offences punishable under Sections 363 and 366-A of IPC (Sections 366, 376, 328, 120-B IPC added later on) at Police Station Sadar Kotkapura, District Faridkot.

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

“Statement of Gora Singh son of Kaka Singh son of Prem Singh residents of village Maur, District Faridkot aged about 50 years mb.no.83606-84855 stated that I am resident of aforesaid address and works as a labourer. I have five children, out of which three are daughters and two are sons. My elder daughter are married and youngest daughter is Miza whose age is about 13/14 years, who lives at home, my wife left me about 10 years ago. On 22.04.2023 I and my both sons had gone to work then my daughter Miza was alone at home then my neighborer Gurbhej

Singh son of Saroop Singh r/o village Maur, relative Soni Kaur wife of Lovely Singh son of Mukand Singh r/o village Assa Buttar, District Sri Muktsar Sahib had come and my neighbroer Gurbhej Singh etc. had gone to work then when I returned home in the evening after doing work then my daughter Miza was not present at home about whom I enquired about my neighborer regarding which I told my neighborer Gurbhej Singh, who assured me that we will enquired about Soni Kaur and my daughter Miza from relatives and you don't worry as your daughter will come home, who till date has enquired from their relatives and known persons but my daughter Miza has not been found anywhere now I came to know after enquiry that Gaggu Singh son of Chota singh @ Galura resident of village Warring, nehra Wali Colony, District Sri Muktsar Sahib and Soni Kaur wife of Lovely Singh son of Mukand Singh r / o village Assa Buttar, District Sri Muktsar Sahib had enticed my daughter Miza for doing wrongful act against whom legal action may kindly be taken regarding which I alongwith retired master Kuldeep singh son of Karnail Singh r / o village Maur, District Faridkot are going to police station for information and has met you and statement has been recorded before you, which has been heard and it is correct. LTI Gora Singh aforesaid, corroborated by Sd/- Retd. Master Kuldeep Singh son of Karnail Singh r/o village Maur, District Faridkot corroborated by Sd/- ASI Sukhdev Singh 508/FDK, police station Sadar Kotkapura dated 24.04.2023."

3. Learned counsel for the petitioner has argued that the petitioner was arrested on 07.05.2023 & investigation in the case already stands completed. Learned counsel for the petitioner has referred to the statement made by the victim under Section 164 of Cr.P.C. wherein no allegations have been made against the petitioner. Learned counsel for the petitioner has further referred, *in extenso*, to the status report dated 21.02.2024 filed by the State of Punjab, relevant wherein reads as under:-

“3. That on 27-4-2023, police I.O apprehended the accused Soni Kaur and arrested her in accordance with law. During investigation the TARY victim girl was recovered by Police of P.S Khuiyan Sarvar and was admitted NOD KUMAR OTKAPA in Smarth and Udhbhav Ashram, Abohar, Distt: Fazilka. On 06-5-2023, on Regd. N 3114 upto 122025 Id receipt of information, police of P.S Sadar Kotkapura reached the said OF Ashram and took the custody IND FEB 2024 of victim girl as per law. Statement of victim U7s 161 CrPC was reduced into writing who inter alia disclosed that "On 22- 4-2023, accused Soni Kaur called Gaggu Singh who took them on their motor cycle to Malout, on next day Soni Kaur took her to Paramjit Kaur alias Pammi and said Pammi and her husband took both of them to V. Sappanwali and she was taken by Soni Kaur to the house of Gora Singh (petitioner). During the night Gupreet Singh and Soni Kaur forcibly administered liquor to her and the present petitioner committed rape upon her without her consent" which attracted the ingredients of offence u/s 376 IPC, accordingly the offence was enhanced vide DDR No. 10 dated: 07-5-2023 and Gurpreet Singh-petitioner was nominated as accused. The main Accused-petitioner was apprehended on 07-5-2023.

4. That on 08-5-2023 the accused-petitioner was medico legally examined at Civil Hospital, Kotkapura. On the same day, the victim girl had undergone medical examination and requisite samples for DNA testing were taken. The complainant did not produce any age proof of victim. In order to determine the age of victim, her ossification test was conducted at GGS Medical College on 17-5-2023 and the medical board opined that the age of victim is between 19-20 years. In furtherance with the investigation, the statement of victim was recorded by the Ld. Magistrate in term of section 164 Cr.P.C however she did not support the prosecution and rendered a statement different from her 1st statement recorded U/s 161 CrPC. Finding the ingredients of offence U / s 366/328 IPC attracted to the facts of the case, necessary enhancement of the offences were made vide DDR No. 29 dated 21-6-2023, The DNA samples were deposited

at FSL Mohali for testing on 19-5-2023 and result is still awaited.”

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 07.05.2023 whereinafter investigation was carried out & challan was presented on 22.06.2023. Total 27 prosecution witnesses have been cited and culmination of the trial will take its own time. The rival contention of the learned counsel for the parties regarding the weightage required to be attached to the statement made by the victim under Section 164 of Cr.P.C. 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 the custody certificate dated 04.03.2024 filed by the learned State counsel, the petitioner has suffered incarceration for about 10 months & is not shown to be involved in any other case. Suffice to say, keeping in view the entirety of facts and circumstances of the case in hand, 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/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

March 05, 2024
poonam

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