

227

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-62137-2023 (O&M)
Date of Decision: 16.01.2024

MANOJ KUMAR

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Arvind Bansal, Advocate for the petitioner.
Ms. Priyanka Sadar, AAG, Haryana.

...

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.123 dated 29.09.2021, registered for the offences punishable under Sections 328, 366, 366-A, 376-D and 506 read with Section 34 IPC and Section 6 of POCSO Act, 2012 at Police Station Women Kaithal, District Kaithal.
2. The case set up in the FIR in question is as follows:-

“Sir, one complaint bearing No.13228006210829 is received in Women Police Station, Kaithal on 29.09.2021 which is as under: To, The S.H.O. Sahiba, Women Police Station Kaithal. Subject:- For committing rape after giving intoxication and threaten to kill. Against: Manoj son of Madan, Asman alias Ashu son of Vijay, Anu wife of Narender and Anju wife of Sunil, residents of Village Deeg, Kaithal, 9350826299-8396938942. Stated that 1. Manisha daughter of Shishpal, is resident of Village Deeg, District Kaithal. In the night of 27.09.2021 at 2.00 am. I woke up for urination. Then Annu and Manju called me at their home on some pretext and they served a tea to me. After sometime I started feeling sleepy. Thereafter, Manoj and Ashu took me somewhere on motorcycle. At about 6:00 am when I gained consciousness, then there were no clothes on my body, Thereafter, I wear clothes and came out from bushes and came at petrol pump situated at

some distance and took a phone from the employee of petrol pump and contacted my brother telephonically. Then family members took me from there. These people left me there after committing rape with me and fled away. So, it is requested that strict action be taken about it. Sd/- Applicant: Manisha d/o Shishpal, resident of Deeg, Kaithal-9896760230. Date of Birth 22.10.2023"
Police Proceedings"

3. Learned counsel for the petitioner has argued that after the accused having been arrested, investigation was completed and challan was presented. 7 prosecution witnesses out of total cited 19 witnesses have been examined. The three material witnesses i.e. the prosecutrix, mother of the prosecutrix and father of the prosecutrix have turned hostile. In this view of the matter, it is argued, that the trial is not likely to culminate into conviction & hence no useful purpose would be served by further keeping the petitioner behind the bars.

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 accused was arrested on 02.10.2021 & after completion of investigation, challan was presented on 28.10.2021 and the trial is underway. As per the custody certificate dated 15.01.2024, the petitioner has undergone actual incarceration of more than 2 years and 3 months & he is not shown to be involved in any other case. The rival contentions of the learned counsel for the parties regarding resiling of PW-1 (prosecutrix), PW-2 (mother of the prosecutrix) and PW-5 (father of the prosecutrix) shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into this aspect of the matter at this stage lest it

may prejudice the rights of either of the parties. No tangible material has been brought forward to indicate that there is likelihood of the petitioner absconding from the process of law or interfering with the remaining prosecution evidence. Therefore, in my considered opinion, further detention of the petitioner 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 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.
- (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.

16.01.2024

Jasmine Kaur

(SUMEET GOEL)

JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No