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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

243 CRM-M-57088 of 2024
DATE OF DECISION :- 25.11.2024

Aman Alam ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Baljeet Beniwal, 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.53 dated 25.02.2024, registered for the offences punishable under Sections 376 & 380 of IPC at Police Station Sector-40, District Gurugram.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

"To, SHO Sir, Police Station Sector 40, Gurugram, Sir, I, Seema Rawat, daughter of Shri Pushkar Singh Rawat, originally resident of A-298 Laxman Vihar Sector 3A, present address G-100 3RD FLOOR, Sector 40. Last night I went to have dinner with some of my friends, I also had drinks there, I reached home around 12:15 and there was a fight going on in our street, so at around 12:30, hearing the noise, I went to my BALCONY, there was a brother standing in my neighbour's balcony, whom I talked for the first time and I came to know his name as Inderjeet, I asked him why the fight was going on and we started talking. Meanwhile a boy



comes and stands in my balcony and tells me that I live on the ground floor of your building and I was standing downstairs and watching you for some time, so I came upstairs. He told me his name was Aman and he stood there and started talking to my neighbor Inderjit Bhaiya. I was feeling cold so I went inside to get a shawl. After I went inside, that boy came inside my house from behind after talking to Inderjit. I was very tired and drunk too, so I was sitting on the bed. When he came inside, we talked for a while and then I asked him to go, but he did not go and started taking advantage of my being drunk. I do not remember what all happened because I was drunk, but when I woke up in the morning, there were many marks on my neck and I was feeling pain at various places on my body as if someone had grabbed me tightly. I was also feeling some pain on my private parts. I had Rs 10,000 in my purse which I had kept before going for dinner. In the morning when I opened my purse, that money was not there. Sir, wrong acts are done with me and Rs 10,000 has also been stolen from my house. I humbly request you to initiate action on my complaint as soon as possible. Thank You. Seema Rawat Mobile No. 8383021882 PERMANENT ADDRESS-A-298 STREET NO. 12 SECTOR 3A GURGAON CURRENT ADDRESS G-100 3RD FLOOR SECTOR 40, GGM, age 31 years Proceedings.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 26.02.2024. Learned counsel has iterated that the petitioner has been falsely implicated into the FIR in question, primarily on account of a misunderstanding. Learned counsel for the petitioner has further argued that the said misunderstanding has now been resolved and a compromise has been effected between the petitioner and the victim, terms whereof have been reduced into writing vide memorandum of understanding dated 06.11.2024 (copy whereof has been appended as Annexure P-2 with the instant petition).

Learned counsel for the petitioner has further argued that the prime prosecution

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witnesses already stand recorded and thus there is no chance that the petitioner may interfere 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 23.11.2024 in Court, which is taken on record.

5. Mr. Ravi Kant Berwal, Advocate has filed vakalatnama for the complainant-respondent No. 2. The same be taken on record.

Learned counsel for complainant-respondent No. 2 has ratified the aspect of a settlement having arrived at between the parties terms whereof have been reduced into writing vide memorandum of understanding dated 06.11.2024 (copy whereof has been appended as Annexure P-2 with the instant petition).

6. I have heard counsel for the parties and have gone through the available records of the case.

7. The petitioner was arrested on 26.02.2024 whereinafter investigation was carried out and challan stands presented on 01.04.2024. Total 11 prosecution witnesses have been cited out of which 08 already stand examined. It is not in dispute that the prime prosecution witnesses, especially the private prosecution witnesses, already stand recorded. The rival contention of learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question on account of misunderstanding & the effect/veracity of the memorandum of understanding dated 06.11.2024 arrived at between the petitioner and the victim (copy whereof has been appended as



Annexure P-2 with the instant petition); 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.

Indubitably, the petition in hand is the second bail petition preferred on behalf of the petitioner. The first bail petition preferred on behalf of the petitioner was dismissed as withdrawn on 12.09.2024. Subsequent thereto, a memorandum of understanding/settlement has been arrived at between the petitioner and victim on 06.11.2024.

At this juncture, it would be apposite to refer herein to a judgment passed by this Court in the case of '**Rafiq Khan Vs. State of Haryana and another**' **CRA-S-2332 of 2023 decided on 22.04.2024**, relevant whereof reads as under:-

"I Second/successive regular bail petition(s) filed is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II. Such second/successive regular bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.

III For the second/successive regular bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice. The metaphoric expression of seeking second/successive bail plea(s) ought not be abstracted into literal iterations of petition(s) without substantial, effective and consequential change in circumstances.

IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every



case has its own unique facts/circumstance. Making such an attempt is nothing but an utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive regular bail petition(s).

V In case a Court chooses to grant second/successive regular bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.”

The factum of memorandum of understanding/settlement dated 06.11.2024 entered into between the parties as also the extended custody period, are sufficient grounds in the considered opinion of this Court to favourably consider the present petition (second regular bail petition) filed by the petitioner. As per custody certificate dated 23.11.2024 filed by learned State counsel, the petitioner has suffered incarceration for a period of about 08 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 case.

8. 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.
- (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/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

9. 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.

10. Ordered accordingly.

11. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

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

(SUMEET GOEL)
JUDGE

25.11.2024
P.Singh

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