



CRM-M-58368-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58368-2024 (O&M)

Date of Decision: 11.12.2024

SANGAM

.. Petitioner

Vs.

STATE OF HARYANA AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Naveen Kashyap, Advocate for the petitioner.
Ms. Priyanka Sadar, AAG, Haryana.
None for respondent No.2.

...

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483 BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No.93 dated 15.07.2023, registered for the offences punishable under Sections 328, 376(2)(n) and 506 of IPC, Section 6 of POCSO Act, 2012 and Section 67-A of IT act at Police Station Women Police Station, 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:-

“Copy of written complaint as under: To, The SHO, Women Police Station, Karnal. It is requested that I Tanisha daughter of Pardeep Kumar resident of house no. 173-A, Ward no. 4, Taraori, I am having friendship with sangam son of Mahender, resident of Village Jundla, district Kaithal from last 5-6 years. We both are good friends for each other. That in may-june 2019 sangam took me to the 7 sis hotel in sector 17, kurukshetra. He took me there on the pretext of food. After that he gave me some intoxicating drug in the food and takes me into the room and do wrong act with me and captured my nude photos. I came to know about these entire things later. When he send me these photos after that he started blackmailing me on the basis of these pictures and commit rape upon me. Now since long he threatened to commit suicide and demanded money otherwise he will viral that pictures and will commit suicide and he already virals more than 50% of the photos. Even now he took 7000 Rs. Within 3-4 days. He kept threatening me with these photos and he also raped me many times which I did not tell to my family due to fear. Now he

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started troubling mw a lot and threatens to kill me or else marry me or else I will kill you. Now fed up with these things I told all these things to my mother. It is therefore requested you to kindly take strict action against him. Tanisha.

3. Compliance report, by way of affidavit of Satvinder Kaur, Inspector SHO, Police Station Women Karnal has been filed by learned State counsel in the Court today and the same is taken on record.

4. Learned counsel for the petitioner has argued that the petitioner is in custody since 19.07.2023. Learned counsel for the petitioner has submitted that a bare perusal of the FIR as also the material appended in the challan/final report qua the FIR in question, would reflect that there was a consensual friendship/relationship between the petitioner and the victim which turned sour later on and it is on this account, the petitioner has been falsely implicated into the FIR in question. Learned counsel for the petitioner has referred to the zimni orders dated 08.01.2024, 11.03.2024, 17.05.2024, 23.08.21024 and 28.10.2024 to argue that the victim is not coming forward to have her testimony recorded as a prosecution witness & thus there is delay in trial. Learned counsel for the petitioner has further argued that the petitioner is a young man aged 25 years. Thus, regular bail is prayed for.

5. 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.

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

7. The petitioner was arrested on 19.07.2023 whereinafter investigation was carried out & challan was presented on 25.10.2023. Total

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(mother of the victim) has been examined till date. The rival contention of the learned counsel for the parties; as to whether there was consensual relationship between the petitioner and the victim which turned sour later on and it is on this account, the petitioner has been falsely implicated into the FIR in question; 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.

A perusal of the zimni orders dated 08.01.2024, 11.03.2024, 17.05.2024, 23.08.21024 and 28.10.2024 reflects that the trial is being procrastinated and the petitioner cannot be saddled with any liability in that regard. 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 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

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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 10.12.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 01 year, 04 months and 21 days. As per the said custody certificate, the petitioner is said to be involved in other FIR also. Indubitably, the antecedents of a person are required to be accounted for while considering a regular bail petition preferred by him. However, this factum cannot be a ground sufficient by itself, to decline the concession of regular bail to the petitioner in the FIR in question when a case is made out for grant of regular bail *qua* the FIR in question by ratiocinating upon the facts/circumstances of the said FIR. Reliance in this regard can be placed upon the judgment of the Hon’ble Supreme Court in ***Maulana Mohd. Amir Rashadi vs. State of U.P. and another, 2012(1) R.C.R. (Criminal) 586***; a Division Bench judgment of the Hon’ble Calcutta High Court in case of ***Sridhar Das vs. State, 1998(2) R.C.R. (Criminal) 477*** & judgments of this Court in ***CRM-M-38822-2021*** titled as ***Akhilesh Singh vs. State of Haryana***, decided on 29.11.2021 and ***Balraj vs. State of Haryana, 1998(3) R.C.R. (Criminal) 191***. Suffice to say further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the present case.

8. 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

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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.

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



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

11.12.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No