

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214

CRM-M-64162-2023

Date of Decision: 28.02.2024

Upender @ Jitender

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Sachin Gupta, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 2nd petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 316 dated 03.09.2021 (Annexure P-1) registered under Section 365 IPC (charged under Sections 363, 366, 376(2)(n) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 vide order dated 14.12.2021) at Police Station Israna, District Panipat.

The present FIR has been registered on the statement of complainant/father of the prosecutrix, which reads as under:-

“To SHO Saheb Police Station Israna Sir, my humble request is that I Ishwar S/o Jeetu resident of Village Shahpur District Panipat. I have two children. One is boy and another is girl. Girl is elder whose age is about 15 years and her name is Payal (Palu). That she left for her school today on 3.9.2021 at eight in the morning but she didn't returned from school at 1 pm. On enquiry from the school that she didn't came to school today. I called on her phone and the phone was switched off number is 7027264009. Girl is 5ft tall whitish complexion and slim body. She is wearing blue school uniform. I have full faith that a mason named Upender resident of Gorakhpur UP whoworked for 1 month.

He used to call at homephone whose number is 7082645131. Now his number is 7988340473. I have full confidence that this is job of mason only. Please look out for my girl."

Learned counsel for the petitioner, *inter alia*, argues that the present FIR is motivated, inasmuch as, the petitioner was working as Mason in the house of the complainant and his wages had not been paid by the family of the prosecutrix. When the petitioner had demanded his wages it is then, that the father of the prosecutrix lodged the present false FIR against the petitioner. It is submitted that the prosecutrix in her statement dated 05.09.2021(Annexure P-4) recorded under Section 164 Cr.P.C., had not supported the case of the prosecution; although, in her testimony dated 17.02.2022 (Annexure P-2) before the trial Court as PW-1, she had supported the prosecution case. Learned counsel further submits that the complainant as PW-2 had turned hostile before the trial Court as is evident from his statement dated 06.04.2023 (Annexure P-3). It is further submitted that out of total 15 prosecution witnesses, 06 have been examined, therefore, conclusion of trial will take considerable time; whereas the petitioner has been in custody since 08.09.2021. Thus, no useful purpose will be served by further detention of the petitioner in custody. It is also submitted that earlier also the petitioner had filed a petition bearing CRM-M-43781-2023, seeking regular bail which was declined by this Court vide order dated 11.09.2023 (Annexure P-6) as on that stage DNA report was not available. It is prayed that the present petition may be allowed and the petitioner be released on regular bail.

Learned counsel for the State has filed custody certificate dated 27.02.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 02 years, 05 months

and 21 days. As per custody certificate, there is no other case against the petitioner. On instructions from ASI Kaptan Singh, learned counsel for the State informs that the DNA report is negative. However, learned counsel for the State vehemently opposes the prayer for grant of regular bail to the petitioner.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case and the custody period undergone by the petitioner including the fact that the custody certificate reveals that there is no other case against the petitioner; moreover, material witnesses stand examined; and out of total 15 prosecution witnesses only 06 witnesses have been examined till date, therefore, conclusion of trial will take considerable time and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Upender @ Jitender S/o Mahatam, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

28.02.2024
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(NIDHI GUPTA)
JUDGE

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