

2024:PHHC:013687

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

212

CRM-M-63663-2023 (O&M)
Date of Decision: 01.02.2024

Deepak Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE SUMEET GOEL

Present:- Mr. Sandeep Tanwar, 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.106 dated 04.06.2021, registered for the offences punishable under Sections 363, 366 of IPC & Section 6 of POCSO Act, 2012 (Section 366 IPC was deleted and Section 366-A was added later on) at Police Station Sector 6, Dharuhera, District Rewari.

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

“To the SHO, Sec-6, Dharuhera. Prayed that I Lal Mohar Yadav son of Sita Ram Yadav, am permanent resident of village Haldi, P.S. Haldi, District Baliya, U.P. and presently residing in rental accommodation with my family at Vakil Colony, City Malpura, Dharuhera. I have three daughters, elder daughter is Khushboo whose age is 13 years and two younger daughter to her are namely Niki and Lali. My daughter was sleeping with my wife Maya Devi. Today at night dated 04.06.2021 I saw at around 2.00 A.M. that my daughter Khushboo was not present at Cot. I

wake up my wife and we search Khushboo nearby but she was not found. Then at around 4.00 A.M. I dialed no.100 to the police control room and you came here and I handed over my complaint in written to you. I have suspicion that my daughter was enticed and took away by Deepak son of Vijay Singh Yadav, resident of village Rajwada Itawa, District Munger, Bihar. Kindly recovered my daughter and strict legal action be taken. Sd/-Lal Mohar Yadav.”

3. Learned counsel for the petitioner has argued that the petitioner was arrested on 07.06.2021 wherein after investigation was carried out & challan was presented. Learned counsel has further argued that the FIR in question is a result of fall out of a consensual relationship between the petitioner and the victim which was not to the liking of the family of the victim. Learned counsel has further argued that the victim (when examined as PW-5) and mother of the victim (when examined as PW-15) have not supported the case of the prosecution & have turned hostile. It is, thus, argued that in all probability, the trial is not likely to culminate into conviction. 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 accused is in custody since 07.06.2021 wherein after challan has been presented on 02.07.2021 & a supplementary challan was also filed on 20.09.2021 wherein total 27 prosecution witnesses have been cited. Undoubtedly, 25 prosecution witnesses out of the abovesaid total 27

prosecution witnesses stand examined. However, an application under Section 311 of Cr.P.C. has been filed on behalf of the complainant/father who had been earlier examined as PW-6. This Court does not deem it appropriate to delve deep into the rival contentions of learned counsel for the parties regarding the weightage required to be attached to the testimonies of the witnesses who have turned hostile. This aspect shall be gone into during the course of trial. As per custody certificate dated 31.01.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 2 years & 7 months. Nothing tangible 874 has been brought on record to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the remaining prosecution evidence. Suffice to say, 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 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/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

Februaray 01, 2024
poonam

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No