



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.59185 of 2024
Date of decision : 20.12.2024

SarfarazPetitioner
Versus
State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Pooja Jaglan, Advocate, for the petitioner
Ms. Ankita Ahuja, AAG Haryana
Mr. Mohd. Saleem, Advocate, for the complainant

SUMEET GOEL, J. (ORAL)

The instant petition has been filed on 22.11.2024 under Section 439 Cr.P.C. for grant of regular bail.

As per the judgment rendered by this Court titled as '*Abhishek Jain v. State of U.T. Chandigarh and another*' (CRM-M No.31808 of 2024, 2024:PHHC:085784), the instant petition is not maintainable under Section 439 Cr.P.C., 1973. However, keeping in view the entirety of facts and circumstances of the case especially that the instant petition pertains to regular bail, the instant petition is directed to be considered as a petition under Section 483 of BNSS, 2023.

Present petition has been filed by the petitioner for grant of regular bail in case FIR No.72 dated 3.2.2024, under Sections 323, 376



(3) and 376-DA of IPC (Charges framed under Sections 120-B, 363, 366, 323, 201, 376 of the IPC and Sections 22, 4 and 17 read with Section 4 of POCSO Act, 2012), registered at Police Station Chandni Bhagh, Panipat.

2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

'Above Application is attached To, SHO with Police Station Chandni Bhagh Panipat Sir, I am Farah daughter of Kasim of Yasin Basi, Resident of Village Gohadigan, Jalalabad District Shamli Uttar Pradesh. I came to my mama Sajid place For approximately 15 days along with my mother Farameena near Chhoturag Chowk. Today on 03.02.2024. around 2'o clock, Me and my mother Farameena both were going back to my mama place by walking on road from Mittal mega Mall, when we came across a petrol pump near Gaal, Allila and Talib Wasiyan Khellkalan Mohalla. Kerana came on a motorcycle and Talib made me sit on the motorcycle, both of them took me to an unknown place, where they did wrong things to me when I started protesting, he hit me on wall. I got hurt and then both of them left me there and ran away. Then an auto diver helped me and dropped me to my mother near Mittal Mall. Action should be taken against them. SD FARAH Mohd. 9996480859 dated 03/02/2024 Today Police Station- Hasb Amad. On receiving the application, on finding that it is a rare crime and Section 323,376(3),376DA IPC CH4 POCSO ACT, Order No.72 dated 03/02/2024 Section 323,376(3),376DA IPC CH4 POCSO ACT Police Station Chandni Bhagh was registered in Panipat and computer process of 12 was checked. The copy L/ASI took into his custody for further action. The outstanding Nuklat HK special report will be sent to the concerned Afran Bala and Area Magistrate through Bajaria E-Mail. First information report DASI Suddesh S7, Panipat Police station Chandi Bhagh District Panipat.'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 24.4.2024. Learned counsel has further argued that the victim has been repeatedly changing her stand which is decipherable from the two statements made by her under Section 164 of Cr.P.C. on 4.2.2024



and 26.4.2024. Learned counsel has further argued that the victim (when examined as a prosecution witness) has turned hostile. Learned counsel for the petitioner has further argued that the petitioner has been falsely implicated into the FIR in question. Thus, regular bail is prayed for.

4. Learned State counsel 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 the regular bail. Learned State counsel seeks to place on record custody certificate dated 19.12.2024 in Court, which is taken on record.

5. Learned counsel for the complainant has submitted that the petitioner has actually not committed rape upon the victim but Khalil and Talib had actually committed rape upon the victim. Learned counsel has further submitted that, the stand of the victim has been at variance on account of threat being extended to her. Upon a pointed query by this Court, learned counsel for the complainant has not been able to point out any specific instance regarding thereat extended to the victim.

6. Mr. Sarfaraj Hussain, Advocate has entered appearance on behalf of the aggrieved person namely Khalil. However, this Court does not find any occasion to grant any opportunity of hearing for the said allegedly aggrieved person namely Khalil.

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

8. The petitioner was arrested on 24.4.2024 whereinafter investigation was carried out and challan stands presented on 24.6.2024.



Total 25 prosecution witnesses have been cited out of which only 2 have been examined till date. It is not in dispute that the victim has turned hostile (when examined as a prosecution witness) qua the petitioner-Naushad. The rival contention of learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question, the weightage/veracity required to be attached to the changing statements made by the victim under Section 164 of Cr.P.C. as also the testimony of the victim as a prosecution witness (wherein she has turned hostile); 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. As per custody certificate dated 19.12.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of about seven months and twenty-three days & is not 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.

9. 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.

10. 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.

11. Ordered accordingly.

12. Before parting with this order, this Court finds itself constrained for referring to the manner in which the victim-prosecutrix had been incessantly changing her stance *qua* the alleged incident. This persistent change in stance amounts to abuse of process of law. Without further commenting on the merits of this aspect of the matter, it is left open to the wisdom of the trial Court to take appropriate action, in accordance with law, against the victim if relevant material so emerges.

13. Nothing said hereinabove shall be construed as an expression of

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opinion on the merits of the case.

(SUMEET GOEL)
JUDGE

20.12.2024
Ashwani

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No