



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.60638 of 2024
Date of decision : 18.12.2024

Sumit KumarPetitioner
Versus
State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pratham Sethi, Advocate, for the petitioner

Ms. Priyanka Sadar, AAG, Haryana

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner in case FIR No.426 dated 27.8.2022, under Sections 304-B, 34 and 377 of the IPC, registered at Police Station Rania, District Sirsa (Charges framed under Sections 304-B, 34 and 302 of IPC).
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

'To, The Station House Officer, Police Station Rania. Sub: Application for taking action against 1. Sumit Kumar son of Hanuman brother in law (Jija) 2. Prithvi Tak son of Bhura Ram (uncle of Jija), 3. Hanuman son of Bhura Ram (father of Jija), 4. Wife of Hanuman, whose name not known), (mother of Jija) Nirvangan, 5. Suman wife of Mahavir (sister of Jija), 6. Mahabir son of not known (Jija of Jija) resident of village Haripura Tehsil Rania District Sirsa and two nanad and other members of the family, who



have hatched conspiracy and committed the murder of sister of applicant. Therefore to register the FIR and to take appropriate action. Sir, It is requested that I, Radah Krishan son of Hanuman caste Kumhar resident of Dhani Shera Tehsil Ellenabad District Sirsa and respectfully submits that;

1. That the marriage of Mamta who was sister of applicant, was solemnized with accused no.1 Sumit Kumar on dated 30.11.2020. Out of this marriage a child was born on dated 14.02.2022. 2. That after the marriage, the above said accused used to give beatings to my sister, used to give taunts for bringing less dowry. However, my sister had tolerated all this. About 7/8 months back, my sister had told about this to my father. My father had convened Panchayat many times and tried to understand them. But their attitude was not changed. They however used to give beatings to my sister on one pretext or the other and used to give threats to her. 3. That my sister told to my mother smt. Salochna that her husband Sumit forcibly do unnatural sex with her and she is quite harassed for the same. 4. That today on dated 27.08.2022, my father has gone to Bharatpur, Rajasthan in connection with his business. At 8:30, my father received phone call on his mobile no. 9467288493 that the heart of Mamta has failed and she has been brought in the hospital of Dr. Jarnail in Rania. 5. That on dated 27.08.2022, at 8:50 my jija Sumit made phone call at my mobile No. 7014870539 from his mobile no. 9729274474 that spray has been given to your sister. Now you may do what you want. 6. That I had sent my brother Sonu to Jarnail Hospital, Rania. I went towards the village. When my brother Sonu reached in the hospital, the doctors of hospital informed to my brother that your sister Mamta was brought in the hospital, but was died. Therefore she was not admitted in the hospital. My brother informed about this to me on phone. 7. That when I reached at Village Ghorawali and enquired from my Jija Sumit and his father about the dead body of my sister, but they did not given any satisfactory answer. When, I along with my relatives repeated asked them, they after one hour brought the dead body of my sister in Nexa Boleno car. They have repeatedly said to us for the cremation. But we told them that we will not cremate her without conducting the postmortem. Upon this they have adopted indecent behavior towards us. My brother has given information to the police. 8. That all the above said accused have connived with each other and have committed the murder of my sister. The postmortem of dead body of my sister be conducted. It is requested that enquiry be



conducted in the above said matter and strict legal action may kindly be taken. Justice may kindly be given to my sister. I shall be thankful to you. Dated 27.08.2022. Sd. Radha Krishan. Applicant: Radah Krishan son of Hanuman caste Kumhar resident of Dhani Shera Tehsil Ellnabad District Sirsa.'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 28.8.2022. Learned counsel has further argued that, before the deceased passed away, there were no clear/specific complaints made by the complainant-side, hence it cannot be said that offence of Section 304-B IPC is invocable against the petitioner. Learned counsel for the petitioner has further submitted that there are total 32 prosecution witnesses cited in the prosecution challan but only one has been partly examined till date and the petitioner is languishing in jail for more than two years and three months. Learned counsel has further submitted that the co-accused namely Mahabir, Hanuman Singh and Sheela have been granted regular bail by this Court and there is no allegation against even them that they have misused the concession of regular bail by intimidating the witnesses/complainant. 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 17.12.2024 in Court, which is taken on record.

Mr. Vipul Joshi, Advocate has entered appearance on behalf of the complainant by filing his *vakalatnama*. The same be kept on record.

Learned counsel for the complainant has vehemently opposed



the grant of regular bail to the petitioner by arguing that there are clear allegations against the petitioner and substantial evidence is available in the prosecution challan which shows the guilt of the petitioner. Learned counsel has further iterated that the petitioner has also been arraigned as an accused for an offence under Section 302 of IPC as well, though in the alternative.

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

6. The petitioner was arrested on 28.8.2022 whereinafter investigation was carried out and challan stands presented on 21.11.2022. Total 32 prosecution witnesses have been cited, out of which only one has been examined (in part) till date. From the material available on record, it is not decipherable that the delay in culmination of the trial can be attributed solely to the petitioner. In this regard, 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:-

'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 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.'

The rival contention of learned counsel for the parties; as to whether the offence under Section 304-B of IPC is made out against the petitioner or not as also the evidence brought forward against the petitioner in the prosecution challan; 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 17.12.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of about two years, three months and nineteen 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.

7. 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.

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.

(SUMEET GOEL)
JUDGE

18.12.2024
Ashwani

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