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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63137-2024 (O&M)

Date of Decision: 19.12.2024

SARFROZ

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Apurva Walia, Advocate for
Mr. Saurav Bhatia, Advocate for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

...

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483 of BNSS for grant of regular bail to the petitioner in case bearing FIR No.362 dated 02.12.2022, registered for the offences punishable under Sections 376, 506, 201 of IPC and Section 4 of POCSO Act (Section 67-B of Information Technology (amendment) Act, 2008 added later on) at Police Station Nagina, District Nuh.

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

*“To, Station House Officer, Police station Nagina.
Subject: for enticing the minor girl and committing wrongful acts with her. Sir, It is requested that applicant Hakamdin S/O Deen Mohammad R/O karheda, Ferozepur, Police station Nagina, District Nuh. I am serving in electricity Department and is residing at Nuh. My daughter Soniya aged about 15 years. On dated 23.07.2019, I have got enrolled my daughter in Kastura Gandhi School, Nuh for studies and she was residing in the Hostel of School and was studying in the School. In the meantime, quarrel took place between me and my wife Rashida. My wife brought my daughter Sonia back from school and*

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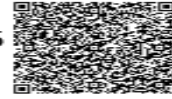
started keeping he with her. when I hold talk with my wife in this regard, to not ruin her studies and let her study. But my wife remained adamant and kept my daughter with her. Sarfaroze S/O Nayab R/O Karheda used to come to the house of my wife and was having evil eye on my daughter. He enticed my daughter and has committed wrongful acts with her. When I came to know about this, I hold talk with accused, then accused started giving threats to me. It is therefore respectfully prayed that legal action may kindly be taken against the accused and justice be given to me. Applicant: Hakamdin S/O Deen Mohammad R/O karheda, Ferozepur, Police station Nagina, District Nuh. Mob. NO. 98130-88508 dated 02.12.2022.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 12.08.2024. Learned counsel for the petitioner has submitted that there was consensual friendship between the petitioner and the victim which was not to the liking of the father of the victim and hence the petitioner has been falsely implicated into the FIR in question. Learned counsel for the petitioner has further submitted that there was a matrimonial dispute between the father of the victim and mother of the victim and it is on this account, the father of the victim is trying to create trouble for the victim as also the present petitioner. Learned counsel for the petitioner has iterated that two prime prosecution witnesses, namely, the victim as also the mother the victim have turned hostile & hence in all likelihood the trial is not likely to culminate into conviction. Thus, the regular bail is prayed for.

4. 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.

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

6. The petitioner was arrested on 12.08.2024 whereinafter investigation was carried out & challan was presented on 10.09.2024. Total

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14 prosecution witnesses have been cited and only 4 witnesses have been examined till date. It is not in dispute that the all the private prosecution witnesses stand examined. Learned State counsel has also not disputed that the victim as also mother of the victim (when examined as PW-2 and PW-4 respectively) have turned hostile. The rival contention of the learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question; whether there was consensual friendship between the petitioner and the victim which was not to the liking of the father of the victim; as also the weightage required to be attached to the testimony of the hostile witnesses, namely, the victim as also mother of the victim; 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. As per the custody certificate dated 18.12.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 04 months and 06 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 present case.

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

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- (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.

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.



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

19.12.2024

Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No