



CRM-M-26711 of 2024

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

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CRM-M-26711 of 2024
Date of Decision: 08.01.2025

Baldev Singh @ Kali

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. A.S. Sekhon, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

Manisha Batra, J.(Oral)

1. The instant one is the third petition for grant of regular bail as filed by the petitioner in case arising out of FIR No.43 dated 07.03.2021 under Sections 363 and 366-A of the IPC, 1860 (Section 376 IPC added later on); Sections 3 and 4 of the POCSO Act, 2012 and Section 3(2)(VA) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short as 'SC/ST Act'), registered at Police Station Sadar, District Sri Muktsar Sahib.

2. The first petition as filed by the petitioner had been dismissed as withdrawn vide order dated 11.01.2024 whereas the second petition bearing CRM-M-15679-2022 had been dismissed on merits on 16.01.2024, by this Court.

3. Briefly stated the facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the

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allegations that on 06.03.2021, the prosecutrix had gone missing from her house and was recovered from the custody of the petitioner on 21.03.2021. On the basis of the statement got recorded by her, offences under Section 376 of IPC, Sections 3 and 4 of POCSO Act, 2012 and Section 3(2) (VA) of the SC/ST Act were added. The petitioner had been arrested on 21.03.2021 and presently, he is facing trial for commission of the aforementioned offences.

4. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. The victim who was a 17 years two months old girl and was having age of discretion, had voluntary gone with him as they were in love with each other and she wanted to marry him. There is no allegation that she had been enticed away or induced by the petitioner. She has since been examined. She has made material improvements in her sworn statement as in her statement recorded under Section 164 of the Code of Criminal Procedure, it was not her version that any act of sexual intercourse had been done by the petitioner with her. The ingredients for commission of offence since under Section 3(2) (VA) of the SC/ST Act are also not attracted. The statements of victim and her father show that she had voluntarily gone with the petitioner. He is in custody for a period of about three years. The trial is likely to take time. The extended period of incarceration is a substantive change in the circumstances. The petition is very much maintainable in this form. Therefore, it is urged that the petition deserves to be allowed.

5. Per contra, learned State counsel has resisted the prayer made by the petitioner in terms of the status report filed by the respondent-State by

arguing that the petition is not maintainable as the petitioner has also been



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booked for commission of offences punishable under the provisions of SC/ST Act and an appeal is maintainable. Even otherwise, there is no substantive change in the circumstances because the previous bail petition of the petitioner had been dismissed on merits. As per the FSL report, human semen detected on the vaginal swabs of the victim had matched with the DNA of the present petitioner. The victim was a minor girl at the time of occurrence. Her consent was of no substance. As such, it is urged that the petitioner does not deserve to be extended the benefit of regular bail.

6. I have heard learned counsel for the parties at length and perused the material placed on record.

7. Undisputedly, the petitioner has been booked for commission of offence under Section 3(2) (VA) of the SC/ST Act and under the provisions of IPC as well as POCSO Act, 2012. So far as the question of maintainability of this petition is concerned, the same had been considered by this Court in CRM-M-61142-2024, decided on 12.12.2024 wherein while relying upon observations made by High Court of Karnataka in ***Somashekar Vs. State by Rural Police Station Authorities, Sakaleshpura, (Karnataka): Law Finder Doc Id # 2347851***, it was observed that where the offences punishable under the provisions of two special enactments vis-a-vis SC/ST Act and POCSO Act are invoked, the petition under Section 439 Cr.P.C., (which is *pari materia* with Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023) is maintainable before the High Court as the provisions of subsequent of the two special enactments will prevail. Since the POCSO Act is an enactment subsequent to SC/ST Act, therefore, its provision will certainly prevail over the provisions of SC/ST Act and as such, this argument



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previous bail petition of the petitioner had been dismissed on 16.01.2024 when the statement of the prosecutrix as well as her father had already been recorded and the same were taken into consideration at that time also. No substantive change in the circumstances ever since the dismissal of the previous bail petition has been pointed or made out from the record.

8. It is well settled proposition of law that when successive bail applications come before the Court, the Court should be very cautious while considering the same. Successive bail applications can be entertained by the Court when some substantial change is established by the accused thereby making him entitled for grant of bail. Reference in this regard can be made to *State of Maharashtra Vs. Captain Buddhikota Subha Rao, AIR 1989 Supreme Court, 2292*, wherein it was observed so and it was further held that the Court should not pass an order of release of an accused on bail in successive bail application merely establishing some cosmetic change between time gap of two applications. There must be some drastic change during the period between two applications. Reference can also be made to *Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and another (2004) 7 SCC 528*, wherein it was observed by Hon'ble Supreme Court that where the offence alleged against an accused is grave, bail cannot be granted only on the ground of long incarceration.

9. After hearing the contentions as raised by learned counsel for the petitioner, I am of the considered opinion that no substantial or drastic change from the date of dismissal of the previous petition as moved by the petitioner has been pointed or made out from the pleas taken by the petitioner. Merely the extended/prolonged period of incarceration or

examination of some material witnesses is not a ground to extend any such

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benefit. It is all the more relevant to mention here that the prosecutrix had already been examined when the previous petition as filed by the petitioner was dismissed and this fact had also been discussed while passing the order dated 16.01.2024. There are serious and specific allegations against the petitioner. The trial is also going on at a good pace and there is nothing to show that there would be any undue delay in conclusion of the same.

10. Keeping in view the nature and gravity of the offence, in my considered opinion, it is not a fit case to enlarge the petitioner on bail, especially in view of the fact that no drastic or material change in the circumstances has been made out. In view of the discussion as made above, but without meaning to make any comment on the merits of the case, I am of the considered opinion that the petition does not deserve to be allowed. Hence, the same is dismissed.

08.01.2025*D.Bansal***(MANISHA BATRA)
JUDGE**

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