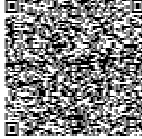


2025:PHHC:025711



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

Sr. No.212

**CRM-M-32154-2024 (O&M)
Date of decision : 21.02.2025**

Juber

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Pranshul Dhull, Advocate, for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

Mr. Intizar-ul-Hasan, Advocate, for the complainant
Through video conferencing.

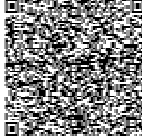
KIRTI SINGH, J. (Oral)

This is a second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.229 dated 28.06.2023 under Sections 323, 362-A & 376 IPC (Section 4 of POCSO Act added later on), registered at Police Station Ferozepur Jhirka, District Nuh Mewat, Haryana.

2. The translated version of the FIR is reproduced below:-

'To, SHO, PS FP Jhirka, Subject: taking legal action against Irshad son of Kanjha, Waxid son of Abdul Karim, Wascen son of Arshad, Kanjha son of Roshan, Sabar son of Zakir, Abdul Karim son of Gafoor all are resident of village Path khori PS F.P.Jhirka and Juber son of Noor Mond. Resident of Neemli PS Pahadi Distt Bharatpur Rajasthan. Respected Sir, it is submitted that I am Maksood son of Chahat resident of village Pathkhori PS Ferozepur Jhirka. That I am a poor and weak person. That on dated 25.06.2023 my daughter aged 18 approximately Jilshana, at about 4.30 AM, had gone for call of nature in the fields and when she did not retune for a

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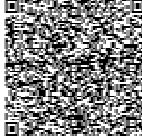


considerable time we searched her and after a keen search we could not find my daughter. That on dated 26.06.2023 about 4.30. AM, we found our daughter in an unconscious condition near to Govt. School Pathkhori. We brought her back to house and then she disclosed to her mother that she was kidnapped by Irshad and Juber on gun point and they also got her sniffed intoxicant and brought her to deserted area where both of them committed rape upon her turn by turn. Thereafter they called, Wazid, Sabar and Waseem and they too committed rape upon her, due to which, she became unconscious and they left me in unconscious position. That When I made complaint to Kanjha, Abdul Karim and Sabar in this regard then they abused me and did manhandling and also extended the threat to kill me in case if I report the matter to the police. Thus, I could not give complaint to police till now. I was at my home. Now I told this story to Basheer son of Rahim Khan and other villagers. Now I came before sir, to give my complaint. Therefore, it is requested that kindly take legal action against the accused. I shall be much thankful to you. Dated: 28.06.2023 Applicant Sd/ - Maksood.'

3. Learned counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in this case. The material witnesses i.e. the complainant and victim have turned hostile. He further submits that the petitioner has undergone an actual custody of 01 year, 07 months and 17 days and he is a man of clean antecedents and the petitioner and victim are married now.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He states that the petitioner was actively involved in the commission of the offence. He has

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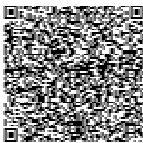
filed custody certificate in Court today and the same is taken on record. As per custody certificate, the petitioner has undergone an actual custody of 01 year, 07 months and 17 days and there is another case registered against him, but he is on bail in that case. He on instructions from SI-Kellu Khan submits that charges were framed on 29.09.2023 and out of a total of 17 prosecution witnesses, 13 witnesses have been examined till date. On a pointed query, he has not disputed the fact that the complainant and victim have turned hostile.

5. Heard the rival submissions made by learned counsel for the parties.

6. A perusal of the case in hand transpires that the petitioner is behind the bar since 05.07.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and out of 17 prosecution witnesses, 13 witnesses have been examined. The complainant and victim have turned hostile during trial. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violate of his rights under Article 21 of the Constitution of India including the right to speedy trial, and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgment of Apex Court in **“Dataram Singh vs. State of Uttar Pradesh and another”, (2018) 3 SCC 22.**

7. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is

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ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (I) The petitioner will not tamper with the evidence during the trial.
 - (II) The petitioner will not pressurize/intimidate the prosecution witness(s).
 - (III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
 - (IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
 - (V) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.
8. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.
9. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

21.02.2025
Ramandeep Singh