

CRM-M-37169-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37169-2024
Reserved on: 15.01.2025
Pronounced on: 27.01.2025

Mukesh ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikas Bishnoi, Advocate
for the petitioner.

Mr. Naveen K. Sheoran, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
648	01.11.2022	Hisar Civil Lines, District Hisar	34, 342, 365 & 506 IPC and 12 of POCSO Act, 67E of Information Technology Act 2008 (During investigation 120B & 201 IPC added)

1. The petitioner incarcerated in the FIR captioned above has come up before this Court under Section 439 CrPC, seeking regular bail.

2. As per paragraph 9 of the bail petition as well as para 9 of the reply, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	848	2022	323, 34, 341, 506 IPC and 3 of SCST Act	Azad Nagar, Hisar
2	332	2023	323, 325, 341 & 506 IPC	Azad Nagar Hisar
3	418	2023	323, 34, 506 IPC and 3 of SCST Act	Azad Nagar, Hisar
4	008	2024	379-A & 34 IPC	Pataudi, District Gurugram
5	276	08.07.2019	323, 341, 506, 34 IPC	Azad Nagar, Hisar
6	175	09.04.2021	147, 149, 323, 325, 506 IPC	Azad Nagar, Hisar
7	180	10.04.2021	25/54/29 of Arms Act	Azad Nagar, Hisar

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3. The facts and allegations are being taken from the reply filed by the State as well as the translated copy of the FIR (Annexure P-1).

4. The victim informed that he is a boy aged 17 years. On 27.10.2022, he had received a phone call from Mohit @ Sukha and he asked him to meet him regarding a case lodged by R against Yogesh Nain and Yogesh Sheoran. When he reached at the gate of Haryana Agriculture University, then 10-15 boys were already drinking and having eight gandasa with them. They took him towards Jawahar Nagar, Hisar and made him sit on a bullet motorcycle and took him near Satrod canal. They took all his clothes and made him nude. Subsequently all of them made a video of the victim when he was nude and made it viral. Subsequently they threatened him on dire consequences in case he complains to anyone.

5. Based on such information, the FIR was registered. The petitioner-Mukesh was arrested on 31.05.2023, based on production warrant because he was already confined in jail and his custody in this case is approximately 01 year & 08 months.

6. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

7. The State's counsel opposes bail and refers to the reply.

8. Although the petitioner has massive criminal history but in the present case, there is no allegation of any assault, physical or sexual and it shows that the petitioner and his accomplices were not intending to outrage the modesty of the victim or to commit any sexual assault with him. But had confined their action by making him nude and then taking his video and circulating on social media. Although there is prima facie evidence regarding aforesaid acts but the petitioner is already in custody and further custody would not be justified.

9. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, pre-trial incarceration should not be a replica of post-conviction sentencing. As per paragraph 14 of the bail petition, the petitioner has been in custody since 31.05.2023 and his custody in this case is approximately 01 year & 08 months. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage.

10. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail.

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11. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

12. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

13. This order is subject to the petitioner’s complying with the following terms. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

14. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall not enter the property, workplace, and residence of the victim until the statements of all non-official and informal witnesses in the trial are recorded. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to Vikram Singh v Central Bureau of Investigation, 2018 All SCR (CrI.) 458); and Aparna Bhatt v. The State of Madhya Pradesh, 2021:INSC:192, 2021 SCC Online SC 230.

15. Given the background of allegations against the petitioner, it becomes paramount to protect the victim, and their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would

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instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

16. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense. In *Mohammed Zubair v. State of NCT of Delhi*, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

17. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

18. This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

19. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

20. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

21. Petition allowed in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

27.01.2025

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Whether speaking/reasoned: Yes

Whether reportable: No.