



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

220

CRM-M-42024-2024

Date of decision: 20th January, 2025

Sumit Tomar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Mukesh Yadav, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J (ORAL):-

The instant one is the third petition for grant of regular bail as filed by the petitioner in case arising out of FIR No. 133 dated 21.07.2023 registered under Sections 323, 328, 376-D, 120-B read with Section 34 of IPC registered at Police Station Women Police Station, Rewari, District Rewari. The previous petition as filed by him CRM-M-64836-2023 (O&M) had been dismissed by this Court vide order dated 16.01.2024. His first bail petition had been dismissed as withdrawn vide order dated 04.12.2023.

2. The petitioner along with co-accused is facing trial for commission of aforementioned offences on the allegations that on 20.07.2023 by hatching a conspiracy with the co-accused, he had committed rape upon two victims by making them consume some stupefying substance and thereby making them lose their consciousness. He was arrested on 22.08.2023.



3. It is submitted by learned counsel for the petitioner that he has been falsely implicated in this case. A period of one year has been spent by him in custody since the date of dismissal of the previous petition. He is even otherwise in custody w.e.f. 22.08.2023. One of the victim has turned hostile and has not supported the prosecution version at all thereby falsifying the version of the second victim as well with regard to their being ravished at the hands of the petitioner. It is submitted that in view of the extended period of incarceration and nature of statement of the victim 'M' (name withheld), he deserves to be released on bail.

4. Status report has been filed by respondent-State learned Assistant Advocate General, Haryana has argued that previous bail petition of the petitioner had been dismissed on merits by taking into consideration all the contentions as raised by the petitioner. The prosecutrix 'S' who is also the complainant in the case has supported the prosecution case while appearing as PW-2 before the learned trial Court and has categorically stated that the petitioner as well as co-accused had subjected her to rape on the fateful day. It is argued that PW-1 i.e. victim 'M' (name withheld) also supported the case of the prosecution in her examination-in-chief as recorded on 28.11.2024 by stating that the petitioner had committed rape upon her and it is only during the course of her cross-examination as conducted on 14.01.2025 that she took a U-turn and stated that no occurrence had taken place and that she had been pressurized by the victim 'S' (name withheld) to make her earlier statement. She also stated that her previous version was not voluntary version. It is submitted that there is no substantive change in the circumstances from the date of dismissal of the



previous petition as one of the victims has totally supported the prosecution case. It is, therefore, argued that in view of this fact and in view of the gravity of the allegations, the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. The petitioner along with the co-accused is alleged to have hatched a conspiracy and in pursuance of the same, to have taken the victim 'S' (name withheld) and victim 'M' (name withheld) to a hotel in Rewari on 20.07.2021 and is further alleged to have subjected them to rape, by administering some stupefying substance by mixing the same in tea, to the victims. The victims have since been examined. One of them has not supported the prosecution version during her cross-examination and has given a statement contradictory to one as which was recorded earlier as well as recorded her examination in-chief. The previous petition of the petitioner was dismissed on merits. The fact that only one of the victims has not supported the case of the prosecution during cross-examination cannot be stated to be such a change in the circumstances which amounts to substantial change. It is well settled proposition of law that when successive bail petitions come before a Court, it should be very cautious while considering the same. Successive bail petitions 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. Moreso, the mere prolonged period of incarceration or hostile statement of one of the material witnesses is also not a ground to extend benefit of regular bail. The allegations against the petitioner are grave in nature. The trial is going on at a proper pace and there is nothing to assume that there would be any undue delay in conclusion of the same. As such, in my considered opinion, it is not a fit case to enlarge the petitioner on bail. Accordingly, finding no ground to allow the petition, the same is dismissed.

7. It is, however, clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

8. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

20th January, 2025

Parveen Sharma

1. Whether speaking/ reasoned
2. Whether reportable

: Yes / No
: Yes / No