

**CRM-M-55316-2024**

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-55316-2024****Date of Decision: 14.01.2025**

Abhishek Masih @ Abhi @ Abhishek Kandiar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGHPresent: Ms. Amarjot Kaur, Advocate
for the petitioner

Mr. R.S. Thind, DAG Punjab

KIRTI SINGH, J.(Oral)

The jurisdiction of this Court under Section 483 of BNSS, 2023 has been invoked for grant of regular bail to the petitioner in case FIR No.0003 dated 07.01.2023, under Sections 363, 366-A and 34 IPC (Sections 376 IPC and Section 6 of POCSO Act added later on) registered at Police Station Kahnuwan, District Gurdaspur.

2. The contents of the above-mentioned FIR are reproduced herein below:-

“Statement of Happy son of late Bira resident of taliya Mohalla, Kahnuwan age about 42 years old, phone number 99153-32732, Aadhar Card number 3017 3122 9250 states that that I am resident of above said address and I am a labourer and has 4 children, two daughters and two sons. That my elder daughter whose date of birth is 06.06.2006, who is minor and is studying in 10+1 class in Government Senior Secondary School, Kahnuwan. On 03.01.2023



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we entire family went to sleep after having our meals and on next day, at about 06:00 AM I woke up and saw that my elder daughter was not in the room on her bed and then after waking up I told my wife Baljit Kaur and my mother Dalbeero and started tracing her in home and we saw that main gate lock was opened and we searched our daughter in our neighborhood and in village but could not find her but our family till now searching her for our respect but could not find her. But now came to know that my daughter Amandeep Kaur was enticed away by Abhishek Masih @ Abi con of Dildar Masih in connivance with his father Dildar Masih & Judge and his mother Suman wife of Dildar Masih both resident of Kahnuwan on pretext of getting married to her. Legal action to be taken against Abhishek Masih @Abi, Dildar Singh @ Judge and Suman. Statement is being recorded, heard and it is correct SD/-”

3. Learned counsel for the petitioner submits that petitioner has been falsely implicated in this case. He further submits that the petitioner and the victim had solemnized marriage on 07.01.2023 and currently the victim is expecting a child. It has further been argued that statement of the prosecutrix was recorded under the provisions of Section 164 Cr.P.C. wherein she has stated that her family wanted to get her married with a person against her will and her ring ceremony was also done and the date for marriage was fixed. Earlier also she had left her home as she was having love affair with the petitioner – Abhishek. She had eloped with her own free will and consent and there was no pressure upon her. He has relied upon affidavit of complainant (Annexure P-3) and affidavit of prosecutrix (Annexure P-4) wherein they have stated that the parties are happily married.

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. As per the custody certificate, the petitioner has undergone actual custody of 10 months and 28 days

and there is no other case registered against him. He on instructions submits that

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charges were framed on 19.12.2024 and out of 20 prosecution witnesses, none has been examined.

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

6. Admittedly, the charges were framed on 19.12.2024 and out of total 20 prosecution witnesses, none has been examined till date. The petitioner has undergone actual custody of 10 months and 28 days and there is no other case registered against him. Further detention of the petitioner will not serve any useful purpose and will be violation of 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. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in ***"Abdul Rehman Antulay and others v. R.S. Nayak and another"*, 1992(2) RCR (Criminapl) 634** observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

8. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, the charges have been framed and not even a single prosecution witness has been examined till date. Therefore, this Court is of the view that further incarceration of the petitioner would not serve any purpose.

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



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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 they are 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.

10. 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.
11. 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.

14.01.2025
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(KIRTI SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No