



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205

CRM-M-56485-2024(O&M)

Date of Decision: 09.01.2025

Shiv Kumar alias Sahil

....Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Sukhdeep Singh, Advocate for the petitioner.

Mr. Dushyant Saharan, A.A.G., Haryana.

Mr. Rajiv Kumar Saini, Advocate for
respondent No.2/ complainant.

NIDHI GUPTA, J. (ORAL)

CRM-124-2025

This is an application under Section 528 of BNS, 2023 for
placing on record the documents as Annexures R-2/1 to R-2/4.

Notice of this application.

Mr. Dushyant Saharan, A.A.G., Haryana, accepts notice on
behalf of the respondent-State and Mr. Rajiv Kumar Saini, Advocate
accepts notice on behalf of the respondent No.2/ complainant.

Heard.

Application is allowed and the said documents are taken on
record as Annexures R-2/1 to R-2/4, subject to all just exceptions.



CRM-M-56485-2024 (O&M)

The petitioner has filed the present 2nd petition under Section 483 of The Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of regular bail in case FIR No. 30 dated 18.06.2024 under Section 506 IPC and Section 6 POCSO Act, 2012 (Added later on and Section 4 POCSO Act deleted) registered at Women Police Station, Karnal, District Karnal.

Learned counsel for the petitioner submits that the present FIR has been registered on the basis of the statement made by the victim herself, wherein she has stated herself to be 17 years old; and it has been alleged in the FIR that one Ashok Kumar, and uncle of the victim, namely, Ashwani had committed rape upon the complainant.

Learned counsel for the petitioner submits that in actual fact, previously the petitioner and the complainant were in a consensual relationship. At that relevant time, the complainant was 17 years and 9 months old, whereas the petitioner was 28 years of age. It is submitted that in the FIR, there is no allegation of rape made against the petitioner.

Learned counsel for the petitioner refers to the application dated 18.06.2024 (Annexure R-2/1) and application dated 23.11.2024 (Annexure R-2/4) both moved to the Superintendent of Police, Karnal wherein she has categorically stated as under (at Page No. 12 of the application):-

“3. That Ashok Kumar, in collusion with my uncle Ashwini and by giving bribe to the police officials, got falsely implicated Sahil S/o Kartu R/o village Badapur in that case and got him send to the jail.



4. *That till today, I neither gave complaint against Sahil nor give any statement anywhere against him nor Sahil did any wrong act with me till today and he is innocent.”*

It is submitted that accordingly, the petitioner has been wrongly implicated in the matter. The petitioner has been in custody since 06.09.2024 as undertrial and no useful purpose would be served by further detention of the petitioner in custody, as charges are yet to be framed in the matter and therefore, trial will take considerable time. Thus, it is prayed that the present petition may be allowed, and the petitioner be released on regular bail.

Vakalatnama filed on behalf of the respondent No.2/complainant in Court today is taken on record.

Learned counsel for the State assisted by learned counsel for the complainant vehemently opposes the prayer made on behalf of the petitioner and submits that the above said applications (Annexure R-2/1 and R-2/4) exonerating the petitioner, have been filed by the complainant on the asking of the petitioner. It is submitted that the complainant has made serious allegations against the petitioner as has been noticed in the impugned order dated 03.10.2024 passed by learned Additional Sessions Judge/Fast Track Special Court (POCSO), Karnal (Annexure P-13), whereby the application filed by the petitioner for regular bail was dismissed. In this regard, learned counsel for the State refers to the statement of the complainant made under Section 161 Cr.P.C. wherein she has stated that “*she met Shiv Kumar through instagram. They*



became friends and later fall in love with each other. On 9.2.2024, Shiv Kumar took her to his house and since then, she is living there. They also established physical relation with consent. Shiv Kumar is a commission agent.”

Learned counsel for the State, on instructions from Inspector Kanupriya, submits that the challan in the present case has been presented on 29.10.2024; charges are yet to be framed; and the next date of hearing before the learned trial Court is 14.02.2025. It is further informed on instructions, that the main accused Ashok Kumar and Ashwini are yet to be arrested.

Learned counsel for the State files custody certificate dated 07.01.2025, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 4 months and 2 days. A copy thereof has been supplied to learned counsel for the petitioner. It is also pointed out that there are 2 more cases pending against the petitioner i.e. 1) Court Complaint No. NACT/103/2021 dated N/A, under Section 138 IPC, 142 IPC, 143 IPC, PS: Not applicable, Karnal; and 2) FIR No. 170/2016 dated 28.04.2016 under Sections 307 IPC, 323 IPC, 34 IPC, registered at Police Station Indri, Karnal and the petitioner is on bail in these two cases.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case including the fact that: a) the custody period of 4 months and 2 days undergone by the petitioner as an



undertrial; b) charges are yet to be framed in the matter; and c) therefore, the conclusion of trial will take considerable time and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is allowed.

The petitioner-Shiv Kumar @ Sahil S/o Karta Ram, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

Pending application, if any, stands disposed of.

09.01.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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