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

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CRM-M-60632-2024 (O&M)

Date of decision: 07.02.2025

Mustakim

...Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Randhir Singh Hooda, Advocate for the petitioner.

Mr. Naveen S. Bhardwaj, Additional Advocate General Haryana

SUMEET GOEL, J. (Oral)

1. The present second petition under Section 483 of BNSS, 2023 has been filed by the petitioner seeking regular bail in FIR No.517 dated 28.12.2023 registered under Section 4 of POCSO Act, 2012 at Police Station Sadar Tauru, District Nuh.

2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:

“TO Women Police Officer, Police Station: Sadar Tauru. Subject: For taking strict legal action against accused for committing rape on minor and rendering justice. It is humbly submitted that I Mubin, s/o Habib is resident P.S. Sadar Tauru. My real brother Jafar drives truck/vehicle and his family is staying adjacent to my house. During the night/morning of 28.12.2023, my niece, whose name is XXXX and her date of birth is 23.08.2008 was sleeping with her paternal grandmother. She started having stomach ache and went to answer the call of nature in the fields adjacent to their house. However, while she was returning therefrom, a boy gagged her mouth and took her about 1 Killa away. He raped her. They came to know about the same in the morning, when neighbours went to the fields and heard cries. When they reached the spot they found it was his niece who was crying and her clothes were fuddled. On receiving information regarding the same, we



went to the spot and found that the hands of my niece were tied and she was in an unconscious state. We brought her back home and enquired from her about the occurrence. She disclosed to us entire occurrence and told that Mustakeem s/o Ali Mohd. r/o Kangraka, who stays at his fields covered mouth of my niece with her clothe and committed rape upon minor. Therefore, you are requested that in this matter, where accused is aged 22-23, strict legal action may kindly be taken against accused and he may be given appropriate punishment and justice may be rendered to us. It will be your kind act. Dated 28.12.2023. Sd/XXXX”

3. The petitioner had earlier applied for grant of regular bail before this Court which was dismissed as withdrawn on 19.09.2024. The relevant part of said order reads as under:-

“Learned counsel for the petitioner seeks permission to withdraw the present petition so as to enable the petitioner to file a comprehensive petitioner with better particulars.”

Thereafter, the present petition i.e. the second petition for grant of regular bail has been preferred by the petitioner on 02.12.2024.

4. Learned counsel for the petitioner has iterated that the petitioner has been falsely implicated in the present case through a fabricated narrative of the alleged offence, asserting that no such incident occurred. The impugned FIR, according to learned counsel, stems from personal animosity and rivalry between the two families. It is further contended that the MLR indicates, no visible external injuries on the victim, nor were any internal injuries noted. Learned counsel asserts that the MLR findings unequivocally contradict the allegations made in the FIR. Moreover, the absence of both external and internal injuries, coupled with the documented forensic details, undermines the credibility of the allegations raised against the petitioner. Learned counsel

has further iterated that FSL report revealed that no semen was detected in the



samples collected during the medical examination of the victim, further undermining the allegations. Learned counsel has further iterated that the allegations against the petitioner are baseless and appear to be driven by ulterior motives rather than factual evidence. Learned counsel has further submitted that the prosecution case is based solely on the testimony of the victim/prosecutrix and her testimony is shrouded with suspicion which makes it abundantly clear that she is not a sterling witness and rather suppressing some real facts about the alleged incident. Learned counsel asserts that it is implausible to conclude that the petitioner is engaged in any wrongful conduct with the victim/prosecutrix, particularly in the absence of any corroborative medical evidence. Learned counsel has further submitted that since the material prosecution witnesses including the victim and other key witness(s), have already been examined, hence there is no likelihood of the petitioner tampering with evidence and/or influencing the prosecution witnesses. In this view of the matter, learned counsel has prayed for grant of regular bail.

5. Learned State counsel has vehemently opposed the grant of regular bail to the petitioner on account of the present petition being non-maintainable as it is the second petition for grant of regular bail as also on merits thereof. Learned counsel further asserts that allegations raised are serious in nature as the testimony of the victim/prosecutrix completely supports the case of the prosecution. According to learned State counsel, the petitioner has allegedly committed sexual assault upon the victim/prosecutrix, who is prima facie stated to be around 16½ years of age at the time of the alleged occurrence. Learned State counsel has further submitted that out of



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total cited 20 prosecution witnesses, 02 have been examined and charges have been framed on 05.04.2024.

6. I have heard the learned counsel for the rival parties and have gone through the available records of the case.

7. It would be apposite to refer herein to a judgment passed by this Court in ***Rafiq Khan vs. State of Haryana and another: 2024: PHHC:054064***; relevant whereof reads as under:-

9. *The paramount issue, in any plea for grant of regular bail, is the liberty of an individual. Indubitably, within our society and jurisprudence, liberty is a cherished foundational principle and has fundamental ascendancy over all other attributes of social order. Even within the framework of Constitution, this principle is made conspicuous, inter alia, in Article 21 of our Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. The Cr.P.C., 1973 is one such procedural law which permits curtailment of liberty of anti-social and anti-national elements. Yet, liberty of an individual, the accused, must not transgress the rights of another individual, the victim, in terms of right to dignified everyday life without any imminent fear or threat. Additionally, the rights of the collective of individuals viz. the State/Society at large, also cannot be neglected. Therefore, while countenancing the facts for considering the bail, the rights of the triad of accused, victim and the State (Society at large) ought to be entailed. Ergo, while considering a bail plea, the Court ought to take into account this core concept(s).*

9.1 *An analytical perusal of Cr.P.C. explicates that this statute does not contain any provision relatable to maintainability or otherwise of second/successive bail petitions, including one(s) seeking regular bail. Once there is no statutory prohibition provided for in law, a Court is not logically empowered to import into it such prohibitions, especially in case of codified and legislated law. It is trite law that Courts ought not to read a provision in codified law which has not been specifically provided for by the legislature especially when such reading results into deprivation of rights. The bar contained in Section 362 of Cr.P.C. can, by*



no stretch of legal imagination, be said to be barring the filing of second/successive regular bail petition.

9.2 *The Hon'ble Supreme Court in case of **Babu Singh** case (supra) has held that rejection of a bail petition does not, by itself, forbid a Court from considering another one, later in point of time. Similar is the ratio decidendi of the judgment of Hon'ble Supreme Court in **Kalyan Chandra Sarkar** (supra). Ergo, it can be safely inferred that the decision of a Court qua regular bail petition is essentially an interlocutory order and hence the postulation of res judicata does not apply to its realm.*

9.3 *The issue that next craves attention is as to what are the factors/parameters for consideration of second/successive regular bail petition(s).*

9.4. *The concordant legal position is that the essential pre-requisite for consideration of second/successive regular petition is the material/substantial change in circumstances and factors of alike nature. Indubitably, the further period of incarceration suffered by the petitioner-accused after rejection/withdrawal of first/earlier plea for bail, pace of trial, the witnesses turning hostile or not supporting prosecution case and changed medical condition(s) of accused would be pertinent factor(s). It goes without saying that these factors are only illustrative in nature and cannot by any means be said to be exhaustive.*

9.5 *No rigid or universal criterion can possibly be delineated to conclusively govern the exercise of judicial discretion, in determining, as to what would constitute as the above stated substantial change in circumstances. Factual flexibility, one additional or different fact, may cause a sea of difference. There is no gainsaying that each case has its own distinct and unique facts and, hence, exercise of such judicial power is best left to the judicial discretion of a Court, in accordance with the settled norms of our jurisprudence.*

10. *As an epilogue to the above discussion, the following principles emerge:*

I Second/successive regular bail petition(s) filed is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II. Such second/successive regular bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.



III For the second/successive regular bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice. The metaphoric expression of seeking second/successive bail plea(s) ought not be abstracted into literal iterations of petition(s) without substantial, effective and consequential change in circumstances.

IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Making such an attempt is nothing but an utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive regular bail petition(s).

V In case a Court chooses to grant second/successive regular bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.”

8. No fresh substantial change in the circumstances has been brought forward which would indicate that the petitioner is entitled to maintain his second petition for grant of regular bail. The first regular bail petition filed by the petitioner was dismissed as withdrawn on 19.09.2024 and, indubitably, approximately 4½ months have passed since then. A perusal of the zimni orders does not reflect that the trial is not proceeding. However, since the first regular bail petition was dismissed as withdrawn and there was no adjudication on merits thereof, this Court deems it appropriate to decide the instant one on merits thereof as well.

8.1 The allegations made in the FIR against the petitioner relate to committing forcible sexual assault upon the victim/prosecutrix. On the



intervening night of 28/29.12.2023, the victim/prosecutrix having abdominal pain proceeded to relieve herself in the fields adjacent to her home. However, while she was returning, the accused (petitioner herein) forcibly gagged the victim and abducted her to a location approximately 01 killa away, where she was sexually assaulted by the accused. The following morning, the neighbours working in the fields heard the distressing cries of the victim, which led to the discovery of the incident. Upon receiving the information, the complainant rushed to the scene and found the victim with her hands tied and in an unconscious state. The victim was immediately brought back home where she disclosed that the accused (petitioner herein) had raped her. The allegations raised against the petitioner are extremely serious in nature. The rival contention of learned counsel for the parties; regarding the veracity/discrepancies in the statements of the victim/prosecutrix cannot be looked into, in detail, at this stage, lest it may prejudice the trial. Even if it be assumed that there are discrepancies in the statements of the prosecutrix, this by itself would not be a sufficient cause to grant regular bail to the petitioner. Furthermore, the allegations against the petitioner are serious in nature and he is required to substantiate his defence by leading cogent evidence.

8.2 The nature of allegations made against the petitioner, especially the fact that the petitioner is alleged to have forcibly dragged the prosecutrix and committed aggravated penetrative sexual assault upon her, disentitles him for grant of regular bail. Moreover, the prosecutrix/victim has not turned hostile and has supported the case of the prosecution. Accordingly, this Court is of the considered opinion that the petitioner does not deserve the concession of regular bail. The petition is, thus, devoid of merits and is hereby dismissed.



9. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the investigating agency as also the trial Court shall proceed further, in accordance with law, without being influenced with this order.
10. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

February 07, 2025
Ajay

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