



CRM-M-63979-2024 (O&M)

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

104/219

CRM-4198-2025 and
CRM-5221-2025 in/&
CRM-M-63979-2024 (O&M)

Date of decision: 14.02.2025

Satish Kumar

...Petitioner

V/s

State of U.T. Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sandeep Gahlawat, Advocate for the petitioner.
Mr. Manish Bansal P.P. U.T. Chandigarh.
Mr. Rajesh Kumar Bhagal, Advocate for the respondent No.2.

SUMEET GOEL, J. (Oral)**CRM-4198-2025**

This is an application under Section 528 of the BNSS for placing on record the copy of statement of mother of the victim recorded as PW-2.

For the reasons stated therein, the application in hand is allowed. Statement of the mother of the victim is taken on record as Annexure P-6. Registry to page-mark the paper-book accordingly.

CRM-5221-2025

This is an application under Section 528 of the BNSS for placing on record the copy of statement of victim recorded under Section 164 of Cr.P.C., copy of charge-sheet dated 01.10.2024 and copy of the complete statement of complainant recorded as PW-2.

**CRM-M-63979-2024 (O&M)****2**

For the reasons stated therein, the application in hand is allowed. The documents are taken on record as Annexures P-7 to P-9 respectively. Registry to page-mark the paper-book accordingly.

CRM-M-63979-2024

1. The instant second petition has been filed under Section 483 of BNSS, 2023 by the petitioner seeking regular bail in FIR No.61 dated 14.06.2024 registered under Section 8 of the POCSO Act, 2012 at Police Station P.S. North, Chandigarh.

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

“At about 3PM 19.04.2024 my son had gone to buy pen from a shop (near cremation ground) in Kaimbwala. Chandigarh. A person aged about 50-55 years was in the shop. My son asked him to give 2 pens (Montex Texta Gel). Shop owner could not find the pen and he called someone to know where the pen was kept. Thereafter he caught the neck of my son with his both hands and said that I will not let you go and then he started sexually assaulting my son. After that he kissed him on both the cheeks. Then he caught the hand of my son very tightly and my son felt pain and sensed danger and he tried to escape. Thereafter he started rubbing his hands on the belly of my son. Then he slapped on the buttocks of my son. My son with great difficulty got out of his clutches. I along with my husband had gone to Fatehabad and my son and daughter were at home. Today at about 6PM when we returned, then my son narrated the incident. Please take necessary legal action for bringing the guilty to book. “Sd/-xxxxx”

3. The petitioner had earlier applied for grant of regular bail before this Court which was dismissed as withdrawn on 27.09.2024. The relevant part of said order reads as under:-



“1. Faced with the situation that the victim is yet to be examined as a prosecution witness, learned counsel for the petitioner seeks to withdraw the present petition at this stage.

2. Ordered accordingly.

3. Pending application(s), if any, shall also stand disposed off.”

Thereafter, the present petition i.e. the second petition for grant of regular bail has been preferred by the petitioner on 13.12.2024.

4. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case as he has no connection whatsoever with the alleged offence in any manner. Learned counsel has further submitted that, even a plain reading of the allegations in the FIR, the essential ingredients of sexual assault as defined under Section 7 of the POCSO Act, which is punishable under Section 8, are not made out against the petitioner. The accusations in the FIR do not satisfy the statutory definition of sexual assault. Moreover, there is an inordinate delay in lodging the instant FIR which raises suspicion of false implication of the petitioner. Furthermore, learned counsel highlights that the petitioner is neither involved in any other offence nor do the allegations fulfill the necessary requirements of Section 7 of POCSO Act (2012). This is further corroborated by the Counselling Report dated 13.06.2024, submitted by the Counsellor, DCPU, Chandigarh Administration which is part of the challan and does not support the allegations against the petitioner. According to the learned counsel, in the cross-examination of the victim (child) there are material discrepancies which cast significant doubt on the allegations as alleged in the FIR. Learned counsel asserts that the petitioner has no criminal antecedents and is a shopkeeper by profession. Moreover, the



CRM-M-63979-2024 (O&M)

4

he sexually assaulted a boy is inherently improbable. A false and fabricated story has been concocted by the complainant just to harass and humiliate the petitioner. According to learned counsel, the petitioner was arrested on 07.07.2024 and has been in custody since then. The challan has already been presented on 14.06.2024 and there are 16 prosecution witnesses in the case, thus, no useful purpose would be served by detaining the petitioner in custody any longer. In this view of the matter, learned counsel has prayed for grant of regular bail.

5. *Per contra*; the learned State counsel (assisted by learned counsel for the complainant) 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 completely supports the case of the prosecution. Accordingly, a prayer for dismissal of the petition is prayed for.

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. The contentions raised by learned counsel for the petitioner with respect to the allegations being not made out from prima facie reading of evidence; inordinate delay in recording of FIR; the allegations being not substantiated in the counselling report were available to the petitioner at the time when the first petition for regular bail was dismissed. Thus, as such, these grounds cannot be considered as substantial change in circumstances, which would indicate that the petitioner is entitled to maintain his second petition for grant of regular bail. For maintaining a second petition for bail, it is *sine-qua-non* to bring forth change in circumstances. This fact assumes more importance when no undue delay in trial has been brought forth. The first regular bail petition filed by the petitioner was dismissed as withdrawn on 27.09.2024 and, indubitably, approximately 4½ months have passed since then. Thereafter, the charges were framed by the learned Court on 01.10.2024 and the case is at the prosecution stage and the examination-in-chief of the complainant-mother of victim was recorded on 11.11.2024 and thereafter on request of the counsel of the petitioner the cross-examination was deferred twice, which stands recorded on 29.01.2025. 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. Indubitably, serious allegations of sexually assaulting the victim, who is a minor child, have been attributed against the petitioner. The instant case has been registered on the complaint made by the mother of the



victim (child) alleging therein that on April 19, 2024, at approximately 3:00 PM, her minor son (hereinafter referred to as “the victim”) visited the shop of the accused (petitioner herein) near the Cremation Ground, Kaimbwala, Chandigarh, to purchase a pen. The accused (petitioner herein), who was a shopkeeper, was allegedly present in the shop at that time. As per the complaint in question, the victim requested for two pens, but the petitioner-accused was unable to locate them and called someone. It is alleged that thereafter, the petitioner-accused forcibly grabbed the victim by the neck, stating that he would not let him leave. The petitioner-accused then allegedly kissed the victim on both cheeks, tightly held his hand, causing pain and distress, and further rubbed his hands on the abdomen of the victim and slapped him on the buttocks. The victim, sensing imminent danger, struggled to free himself and managed to escape from the grasp of the petitioner-accused. The allegations, if substantiated, would attract stringent penal provisions under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and the Indian Penal Code, 1860, considering the victim being a minor child and the nature of the acts alleged. From the entire factual conspectus brought forward in the present petition, this Court is of the considered opinion that the allegations made in the FIR against the petitioner relate to committing sexual assault of the minor child. The allegations raised against the petitioner are extremely serious in nature. The only fresh ground (change in circumstances) after the dismissal of earlier bail petition on 27.09.2024 is with respect to alleged discrepancies in the cross-examination of the complainant-mother of the victim (PW-2). It is not appropriate for this Court, at this stage, to delve deep into this contention. The rival



contention of learned counsel for the parties; regarding the discrepancies in the cross-examination of the victim and report of the Child Welfare Committee 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 cross-examination of the victim, this by itself would not be a sufficient cause to grant regular bail to the petitioner.

8.2 The nature of allegations made against the petitioner disentitles him for grant of regular bail. 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. The trial Court is directed to expedite the trial and conclude the same preferably within a period of 06 months from the date of receipt of certified copy of this order.

11. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

February 14, 2025
Ajay

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