



CRM-M-64699-2024

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

218

CRM-M-64699-2024

Date of decision: 14.01.2025

Kashmir Kaur

...Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Ankit Joshi, Advocate as Legal Aid Counsel
for the petitioner.

Mr. Anup Singh AAG Punjab.

SUMEET GOEL, J. (Oral)

The instant petition has been filed on 18.12.2024 under Section 439 of Cr.P.C., 1973 for grant of regular bail.

As per the judgment rendered by this Court titled as '*Abhishek Jain Vs. State of U.T. Chandigarh and another (CRM-M-31808-2024:2024:PHHC:085784)*', the instant petition is not maintainable under Section 439 of Cr.P.C., 1973. However, keeping in view the entirety of facts and circumstances of the case especially that the instant petition pertains to regular bail, the instant petition is directed to be considered as a petition under Section 483 of BNSS, 2023.

1. Present petition has been filed for grant of regular bail to the petitioner in case bearing FIR No.113 dated 31.05.2024, registered for the offences punishable under Sections 363, 366-A and 376 of IPC, Section 6 of POCSO and Section 3 & 4 of Immoral Trafficking (Prevention) Act at Police Station Sadar Amritsar, District Amritsar.



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

“Statement of Ajay Kumar S/O Ashwani Kumar, resident H.no.30 Street No.6 Lachmi Vihar 88 Foot Road Majitha Road Amritsar Age 40 Years Mb 8847550947 declared that I am a resident of the above mentioned address and I am doing private job. A girl whose name is Poonam whose date of birth is 10-12-09 whose age is crib 14 years 7 month is who left me and my sister Gurjit Kaur sleeping on the night of 27.5.2024 at around 11.30 PM. I have been searching for her till now, which I came to know about today. That to my daughter Poonam a boy named Rohit S/O Late Mukhtar Singh resident near Railway Quattar Patti District Tarn Taran who is to marry my daughter Poonam Vargla has taken away by deception Legal action should be taken by the claimant. The statement is written and heard. Ajay Kumar said true/- Ajay Kumar verified true/- Devinderjit Singh ASI Thana Sadar Amritsar dated 31-5-24”

3. Learned counsel for the petitioner has iterated that the petitioner has no connection with the alleged allegations levelled in the instant case. The petitioner has not been named in the primary complaint and the name of the petitioner surfaced solely on the disclosure statement of a co-accused namely Sofia. It is a well established principle of law that the statement recorded by the Investigating Agency is inadmissible under the law and is specifically hit by Sections 26 and 27 of the Indian Evidence Act. Moreover, the statement made before the Investigating Agency cannot be considered evidence at this stage against the petitioner as section 26 of the Indian Evidence Act categorically prohibits the admissibility of any confession made by a person in police custody unless made in the presence of a Magistrate. Therefore, the inclusion of the name of the petitioner in the instant case based solely on such a statement is legally unsustainable.

Learned counsel asserts that the petitioner has been falsely implicated in the

**CRM-M-64699-2024****3**

present case, despite having no involvement in the alleged crime. A plain reading of the FIR indicates that the petitioner has been dragged into the case based purely on assumptions and presumptions without any substantive basis. Furthermore, the allegations against the petitioner are fabricated, baseless and appear to be motivated by malice with an intention to extract money or settle personal grudges. No recovery has been made from the possession of the petitioner and any recovery shown by the investigating agency is purely planted and fabricated. Since the challan has already been filed before the competent Court of jurisdiction and hence no useful purpose would be served by keeping the petitioner in custody. In this view of the matter, learned counsel has prayed for grant of regular bail.

4. Learned State counsel has opposed the present petition by arguing that the allegations raised against the petitioner are serious in nature and, thus, she does not deserve the concession of the regular bail. Learned State counsel submits that the victim is alleged to have levelled specific allegations against the petitioner in her statement made under Section 164 of Cr.P.C., 1973. Learned State counsel has further submitted that total 17 prosecution witnesses have been cited in the trial and charges were framed on 05.10.2024.

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

6. Before dwelling into the matter at hand, this Court likes to point out that while considering matters involving sexual offences, a Court has to be mindful that the incidents of sexual violence against the women in a

**CRM-M-64699-2024****4**

prestige and future of the victim which has been lowered and shattered into pieces. Once a victim being a woman has been hurt physically, emotionally, and mentally at a tender age, the same is bound to have adverse effects on the overall growth and development of the said human being. It is, thus in the interest of justice and of course the overall interest of the society at large that proceedings are handled with due care and precaution, especially when the Court is dealing with an application for releasing the accused on bail.

7. As per the allegations put forth in the FIR in question, indubitably serious allegations have been levelled against the petitioner. The factual matrix of the prosecution's story stems from the registration of the FIR, which is based on the information provided by the complainant wherein he alleged that on 27.05.2024, at approximately 11:30 PM, her daughter allegedly left the house without informing anybody. Subsequently, the complainant came to know that one Rohit, son of late Mukhtar Singh, a resident of near Railway Quarters, Patti, District Tarn Taran, is alleged to have enticed his minor daughter on the pretext of marriage. Initially, the FIR was registered against the accused Rohit under Sections 363 and 366-A of IPC. However, upon further investigation, the offences under Section 376 of IPC, Section 6 of POCSO Act and Sections 3 and 4 of the Immoral Traffic (Prevention) Act were added to the case. The name of the petitioner has been subsequently surfaced in the case based on the disclosure statements of co-accused Sofia and her own disclosure statement. The allegations against the petitioner are grave and specific, claiming involvement in coercing the minor victim into the alleged flesh trade, handing her over to a customer and accepting monetary benefits. As per the



police record, the medical examination of the victim revealed that her UPT (Urine Pregnancy Test) turned out positive.

8. The nature and gravity of the allegations levelled against the petitioner, particularly the accusation that the petitioner, in concert with the co-accused, is alleged to have forcibly confined the prosecutrix against her will and compelled her into the illegal act of flesh trade, disentitles her for grant of regular bail. Moreover, the victim has purportedly made specific allegations against the petitioner in her statement recorded under Section 164 of Cr.P.C., 1973 which carried substantial evidentiary value at this stage of proceedings. The allegations against the petitioner are grave and the statement of the victim further corroborates the case of the prosecution at this stage. 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

January 14, 2025
Ajay

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