



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

(146)

CRM-M-68698-2025**Date of Decision: 06.03.2026**

RAFIQ ALIAS RAFIK

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Sahil Gupta, Advocate
for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

KIRTI SINGH, J. (ORAL)

1. The jurisdiction of this Court under Section 483 of BNSS has been invoked for grant of regular bail to the petitioner in case FIR No. 298 dated 22.09.2023 under Sections 363, 366-A, 323 and 506 IPC (later on added Sections 323 and 506 of IPC and Section 6 of POCSO Act), registered at Police Station City Nuh, District Nuh, Haryana (Annexure P-1).

2. The translated version of the FIR is reproduced below:-

“To The S.H.O. Sahib, Police Station City Nuh Subject: Application regarding my daughter being lured and taken away by an unknown person. Respected Sir, It is humbly submitted that I, the complainant Budun, son of Sh. Sonu, resident of Ward No. 03 near Ali Pradhan, Nuh, Tehsil and District Nuh, am a permanent resident of the above address. I do hawking work and I have been living in Nuh for the last 4 years. I live by making a jhuggi (temporary hut). That on 19-09-2023, I had gone for my work to different villages and when I returned home at 3:00 PM in the evening, my daughter xxxx, aged 13 years, was not present at home. My daughter has been lured and taken away by some unknown person. I searched for my daughter xxxx in the surrounding areas but could not find her anywhere. Sir, I received a call from mobile number 8053108656, after which I tried to contact my daughter on her mobile number 989663xxxx, but her phone was switched off. Therefore, I request you to kindly register a case against the unknown person and initiate legal action. I shall be highly obliged. Dated:



22.09.2023 Complainant: Budun, son of Shri Sonu, Resident: Ward No. 03 near Ali Pradhan, Nuh Tehsil & District Nuh Mobile No.: 82870xxxxx ”

3. Learned counsel for the petitioner submits that the 20-year-old petitioner has been falsely implicated on the basis of the statement of the father of the prosecutrix, on the allegation that the petitioner had enticed away his daughter and committed sexual assault upon her. It is further submitted that the alleged incident occurred on 19.09.2023, whereas the FIR was registered after an unexplained delay of three days. The age of the prosecutrix is also a disputed question of fact. There is no cogent evidence on record to conclusively establish the guilt of the petitioner. Moreover, the material witnesses have already been examined, and all of them have turned hostile during their deposition before the learned trial Court. Learned counsel submits that the 20 year old petitioner has already undergone an actual custody of 02 years 04 months and 09 days and has clean antecedents.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He states that the petitioner was actively involved in the commission of the offence. He has filed custody certificate in Court today and the same is taken on record. As per custody certificate, the petitioner has undergone an actual custody of 02 years 04 months and 09 days. The learned State counsel, on instructions from official concerned, submits that in the present case, charges were framed on 31.01.2024 and out of total 29 prosecution witnesses, 20 have been examined till date. He submits that in view of the serious allegations against the petitioner, he is not entitled to the concession of regular bail.

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

6. Trite to say that at the stage of considering a petition seeking bail,



the Court, though not required to make a roving inquiry into the evidence, must take into consideration the nature of the offence, severity of the punishment and prima facie, the involvement of the accused and the material on record.

7. Before proceeding further, a gainful reference can be made to the observations passed by the Hon'ble Supreme Court in ***Sanjay Chandra v. CBI, (2012) 1 SCC 40***, relevant paras whereof reads thus:

"21.In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22.From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances."

8. Reverting to the case in hand, it is borne out from the record that charges came to be framed on 31.01.2024. Yet, 20, out of 29 cited prosecution witnesses have been examined. The pace of the proceedings, thus, indicates

that the conclusion of trial is not imminent. The petitioner has already



remained in actual custody for a period of 02 years 04 months and 09 days. It is also not disputed that he has no criminal antecedents and is not involved in any other case.

9. While the truthfulness or otherwise of the allegations levelled against the petitioner, and the culpability, if any, would be tested and determined on the touchstone of evidence during the course of trial, the parameters governing the grant of bail necessitate a balanced consideration of the nature of accusation, the stage of the trial, the antecedents of the accused, and the likelihood of his absconding or influencing the course of justice.

10. Presently, no material has been placed on record to suggest that the petitioner poses a flight risk or that his release would impede the fair conduct of the trial. Moreover, it is noted that the material witnesses i.e. prosecutrix as well as her parents during the course of her examination before the trial Court, did not support the prosecution version and have been declared hostile. While it is settled that the probative value of such testimony is a matter for appreciation at the stage of final adjudication of the case, yet, even while refraining from entering into any conclusive evaluation thereof, this factum cannot be completely overlooked. Therefore, upon taking into account all the considerations stated hereinbefore, and without expressing an opinion on the merits of the case lest it may prejudice the trial, this Court is of the opinion that the continued detention of the petitioner, in the backdrop of the pace of the proceedings and the substantial period of incarceration already undergone, would not advance the cause of justice. The guarantee of personal liberty under Article 21 of the Constitution of India, which includes the right to a speedy trial, obliges the Court to ensure that pre-trial incarceration does not assume a punitive character. The prolonged incarceration, without the



prospect of the trial being concluded in the near future, would also run contrary to the settled legal principle that 'bail is the rule and jail is the exception', as reaffirmed by the Hon'ble Supreme Court in ***Dataram Singh vs. State of Uttar Pradesh and another (2018) 3 SCC 22.***

11. Accordingly, the present petition is allowed, and to ensure that the interests of justice are adequately safeguarded, the petitioner is ordered to be released on regular bail upon furnishing of adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate, subject to the following terms and 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 he is 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.

12. 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.

13. It is reiterated that the observations made in hereinabove are only



for the purpose of adjudicating the present bail petition, and must not be construed as a final expression of opinion on the merits of the case.

14. Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

March 06, 2026
Ritika

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