

2024 PLRonline 13
= (2024-2)214 PLR 831 (SN)
[ID#442768]

PUNJAB AND HARYANA HIGH COURT
Before: Mr. Justice Sumeet Goel.
ANKIT @ GOLDY – Petitioner,
Versus
STATE OF HARYANA – Respondent.
CRM-M-38527 of 2024

BNSS, 2023 Section 483 - Court does not deem it appropriate to delve deep into the contentions, at this stage, lest it may prejudice the trial - Nothing tangible to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence - As per custody certificate, petitioner, who is a young man aged 22 years, has already suffered incarceration for about 01 year 10 months and 15 days & is not shown to be involved in any other case - Bail granted - IPC, Sections 354- B, 376DA, 506, 216 - POCSO Act, Section 6 .

Mr. Samay Singh Sandhawalia, for the petitioner. Ms. Priyanka Sadar, AAG, Haryana.

Sumeet Goel, J. (Oral) – (14th August, 2024) - Present petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No. 98 dated 26.09.2022, registered for the offences punishable under Sections 354- B, 376DA, 506, 216 of IPC and Section 6 of POCSO Act at Police Station Women, Kaithal.

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

"I, (name), aged about 15 years, daughter of xxxx (name) and a resident of xxxx. I am studying in 10 Class. Deepak son of Subhash Chand, caste Rod, resident of village Barsana used to visit her house, like their family members. One day, on finding an opportunity, he picked the phone of her grandfather and send obscene messages by that number on his mobile and took a screen-shot of it, with him. Th mjjwzseerafter, Deepak started blackmailing him with obscenity. Deepak pressurized her that

in case she will not meet her, he will viral the messages. Due to fear of defame, she went to meet him. Harsh was also with him. He gagged her mouth and after threatening her, Deepak took her to his bara. There, Deepak and Harsh committed rape on her by extending threat to her and prepared her video. Under fear, she did not disclose this fact to her parents. After this incident, Deepak and Harsh blackmailed her and called her again. Except Deepak and Harsh, their other three associates namely Sahil, Sachin and Goldy were also present. All these three persons made pressure upon her under the pretext of viraling the video and raped her. The incident is of dated 20.11.2020. They, all threatened her to keep mum, otherwise they will viral the video. After that incident also, they continued to blackmail her and extended threat to injure her life. She refused to meet them. On this, they viralled her obscene video and she is very much disturbed and she is socially defamed in the society."

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 27.09.2022. Learned counsel has further argued that after presentation of the challan, charges were framed against the present petitioner on 15.03.2024. Learned counsel for the petitioner has further argued that there are total 25 prosecution witnesses and culmination of trial, but of course, will take its own time. Learned counsel for the petitioner has submitted that the petitioner has suffered incarceration for about two years and the trial has not yet even effectively begun. Learned counsel for the petitioner has further submitted that on 26.04.2024 as also on 30.05.2024 the prosecution witnesses including the victim were summoned but they did not turn up to have their testimonies recorded. Learned counsel for the petitioner has further argued that the petitioner has been falsely implicated into the FIR in question and there is no tangible prosecution evidence available against the petitioner so as to warrant conviction. In this view of the matter, learned counsel has prayed for grant of regular bail.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the

regular bail. Learned State counsel seeks to place on record custody certificate dated 13.08.2024 in Court, which is taken on record.

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

6. The petitioner was arrested on 27.09.2022 whereinafter investigation was carried out and challan stands presented on 06.12.2022. Total 25 prosecution witnesses have been cited and culmination of trial will take its own time. It is indubitable that the petitioner has already suffered incarceration for about 01 year 10 months and 15 days with the trial no way to conclude in near future. It will be apposite to refer herein to a judgment of Hon'ble Supreme Court titled as "*Manish Sisodia v. Directorate of Enforcement*" 2024 INSC 595; relevant whereof reads as under:-

"50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.

51. Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra and Another wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu and Others v. Public Prosecutor, High Court of Andhra Pradesh⁷, Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, Hussainara Khatoon and Others (I) v. Home Secretary, State of Bihar Union of India v. K.A. Najeeb and Satender Kumar Antil v. Central Bureau of Investigation and Another. The Court observed thus:

"19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature

of the crime."

52. The Court also reproduced the observations made in Gudikanti Narasimhulu (supra), which read thus:

"10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:

"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:

"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception."

The rival contention of learned counsel for the parties; as to whether there is any tangible prosecution evidence available against the petitioner & as to whether the petitioner has been falsely implicated into the FIR in question; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence. As

per custody certificate dated 13.08.2024 filed by learned State counsel, the petitioner, who is a young man aged 22 years, has already suffered incarceration for about 01 year 10 months and 15 days & is not shown to be involved in any other case.

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

(i) The petitioner shall not mis-use the liberty granted.

(ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.

(iii) The petitioner shall not absent himself on any date before the trial.

(iv) The petitioner shall not commit any offence while on bail.

(v) The petitioner shall deposit his passport, if any, with the trial Court.

(vi) The petitioner shall give his cell-phone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaq Magistrate.

(vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

R.M.S.
Ordered accordingly.

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