



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

211+105

CRA-S-1726-2024 (O&M)
Date of decision : 25.08.2025

Mubarik @ AnduAppellant

versus

State of Haryana and anotherRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Kamal Chaudhary, Advocate for the appellant.

Ms. Priyanka Sadar, Senior D.A.G., Haryana.

None for the complainant.

NAMIT KUMAR, J. (ORAL)

CRM-19247-2025

Prayer in the instant application filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 is for preponing the date of hearing fixed in the main case.

Since the main case is already listed today, therefore, the instant application has been rendered infructuous.

Disposed of as having become infructuous.

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1. The appellant has filed the instant appeal against the order dated 04.01.2024 passed by learned Additional Sessions Judge, Fast Track Special Court, Faridbad, whereby an application filed by the appellant under Section 439 of Code of Criminal Procedure, 1973 for grant of regular bail in case bearing FIR No.141 dated 12.07.2021 registered under Sections 366, 380, 450, 506 & 201 of Indian Penal



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Code, 1860; Sections 6 & 18 of Protection of Children from Sexual Offence Act, 2012 and Section 3(2)(V)(Va) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Women NIT, Faridabad, has been dismissed.

2. Status report by way of an affidavit of Ms. Monica, HPS, Assistant Commissioner of Police, NIT, Faridabad, on behalf of the respondent-State, filed in the Registry is taken on record. As per para 2 of the said report, in compliance of order dated 29.04.2025 passed by this Court, the complainant/victim have been informed about the next date of hearing fixed in the present appeal. However, no one is present on their behalf.

3. Brief facts of the case are that on 12.07.2021, the father of the prosecutrix made a complaint to the police stating therein that on 11.07.2021 at about 2:00 a.m. (midnight), when he along with his wife and three children was sleeping on the roof of the house, the appellant abducted his minor daughter, while she was sleeping. He also took away his mobile. After sometime, when they woke up and found their daughter missing, they raise noise upon which, the villagers started looking for the victim and the police was also informed. After a long search, she was found coming from the forest area and she was crying. The victim told her mother that the appellant has removed her clothes and did obscene act with her. On the basis of the said complaint, the instant FIR was registered.

4. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case. He



submits that there is a contradiction in the statement of the victim and the complainant. He submits that in the FIR it has been stated that the victim told her mother that the appellant took off her cloths and did wrong act with her, whereas in her statement recorded before the Trial Court, she has stated that the appellant had not done anything wrong with her. He further submits that in her examination-in-chief, the victim has not identified the appellant, however, in the cross-examination on a question put to her “whether the person standing in front to you wearing T-shirt and Lower is the same person who took you to jungle”, she stated “yes”. On another question “whether she knows what is Lower” she says “I do not know”. He has further referred to the statement of the complainant, who is the father of the victim, wherein he stated that it is correct that the victim did not tell that Mubarik had taken her away and she did not tell the name of the person, who had taken her away.

5. Learned counsel for the appellant further submits that since there is no aggravated penetrative sexual assault as is clear from the perusal of the statement of the victim, no offence under Section 6 of POCSO Act is made out. He submits that the appellant is behind the bars since 14.07.2021. He also submits that investigation in the present case is complete; challan stands presented; charges have been framed and out of total 20 prosecution witnesses, 08 have been examined; 01 given up and 11 are yet to be examined. The trial is likely to take a considerable time to conclude and therefore, no fruitful purpose would be served by detaining the appellant behind the bars.



6. Per contra, learned State counsel, while referring to the averments made in the status report, has vehemently opposed the prayer for grant of regular bail to the appellant on the ground that the allegations against the appellant are serious in nature. However, she could not refute the factual position that out of total 20 prosecution witnesses, 08 have been examined; 01 given up and 11 are yet to be examined. She has also filed custody certificate dated 23.08.2025 in the Court which is taken on record. As per the custody certificate, the appellant is behind the bars since more than last four years. The custody certificate further shows that the appellant is also involved in three other cases.

7. Learned counsel for the appellant submits that in FIR No.102 dated 21.05.2019, the appellant is on bail since 29.02.2020 and in other two cases, the appellant has already undergone the sentence. Relying upon the judgment of Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382*** learned counsel for the appellant contends that the bail application of the appellant cannot be rejected solely on the ground that the appellant is involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

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8. I have heard learned counsel for the parties and perused the record.

9. Keeping in view the custody period of the appellant which is 04 years, 01 months and 08 days and the facts that there is a contradiction in the statement of the victim and the complainant; investigation has been completed; challan has been presented; charges have been framed and out of total 20 prosecution witnesses, 08 have been examined; 01 given up and 11 are yet to be examined and the trial may take a considerable time to conclude, therefore, the impugned order dated 04.01.2024 passed by learned Additional Sessions Judge, Fast Track Special Court, Faridabad is set aside and the appellant is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

10. The appeal stands disposed of accordingly.

11. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present appeal only.

25.08.2025*kothiyal***(NAMIT KUMAR)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No