



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

229

CRR-139-2024 (O&M)
Date of decision: 20.02.2025

ANSH

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present : Ms. Mallika Dhillon , Advocate
for the petitioner.

Mr. R.S. Thind, DAG, Punjab.

KIRTI SINGH. J.(Oral)

CRM-28527-2024

1. For the reasons mentioned in the application, the same is allowed.
Annexure P-8 is taken on record subject to all just exceptions.

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2. The present revision petition has been filed for grant of regular bail to the petitioner in case FIR No.77 dated 05.09.2023, under Sections 376(D) IPC and under Section 6 of POCSO Act (Section 376 (DA) IPC added later on), registered at Police Station Women, District Amritsar City.
3. The translated version of the FIR is reproduced below:-

“Statement of Mark Masih son of Silash Masih resident of H. No. 111, Street No.01, Mahindra Colony, Mohkamura Amritsar, aged about 19 years, M. No. 98882-17835. Stated that I am resident of above mentioned address and is running a Momoz vend at Bill Wala Chowk, Mohkamura. I, my father and my younger sister



Aester are residing in a rented accommodation. My elder sister Joti Batra is married and the mother being mentally retarded is residing with maternal grandmother at Nepal. I and my sister Aester were sleeping on the roof. It was the time at 05 AM, when my younger sister Aester told me that the fourth house from our house, which belongs to Pinki, where, the husband of Pinki namely Anil Kumar alias Billi was partying with some of his friends and my sister Aester was not feeling asleep, due to which, she was standing on the roof. In the intervening night at 02 AM, one of the said boys called my sister Aester by gesturing her and my sister is not much attentive and being unknown, she went there. Upon reaching there, the above said boys did illicit acts with her. Thereafter, I disclosed the entire story to my elder sister Joti Batra over the phone and called her to the house. After her arrival to the house, she asked about the entire story from my younger sister Aester, upon which, my younger sister Aester told that when she was standing on the roof at night, then following the gestures made by a boy, she went to the house where the party was going on, by crossing over the roofs, where, the husband of Pinki namely Anil Kumar alias Billi and his four other friends were present. From there, the said boys caught my sister and took her to the bathroom constructed on the roof of adjoining house of Radha Sharma. Firstly, the friends of Anil Kumar alias Billi started doing illicit acts with my sister, and when my sister started raising noise, they tied the mouth of my sister with a cloth. Thereafter, they one by one started touching the private part of my sister and those four boys took turns to commit rape upon my sister and Anil Kumar alias Billi was seeing all this while standing on the spot and was laughing, who didn't rescue my sister from these four boys. My sister do not know the names of those four boys, but can recognize them on their coming before her, but Anil Kumar alias Billi is personally known to all of them. Therefore, take legal action against Anil Kumar alias Billi along with his four friends and deliver justice to my sister. Statement



read over, heard, which is correct. Sd/-Mark Masih (In English).

4. Learned counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in this case. The petitioner has not been named in the FIR and only on the basis of disclosure statement of the main accused he has been nominated as an accused. The victim has turned hostile *qua* the petitioner. Reliance has been placed upon the judgment passed by the Coordinate Bench of this Court in CRR-2485-2018, decided on 27.09.2018.

5. 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 01 year, 05 months and 11 days and there is no other criminal case pending against him. On a pointed query, it is not disputed that the victim has turned hostile *qua* the present petitioner.

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

7. A perusal of the case in hand transpires that the petitioner is behind the bars since 06.09.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as out of 14 prosecution witnesses, 04 witnesses have been examined so far. The petitioner has undergone an actual custody of 01 year, 05 months and 11 days and there is no other criminal case pending against him. The victim has turned hostile *qua* the petitioner during trial. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by



further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violate of his rights under Article 21 of the Constitution of India including the right to speedy trial, and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgment of Apex Court in “Dataram Singh vs. State of Uttar Pradesh and another”, (2018) 3 SCC 22.

8. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on bail subject to furnishing bail/surety bonds by his natural guardians to the satisfaction of the concerned Principal Magistrate, Juvenile Justice Board. The petitioner shall also abide by the following 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.

9. 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.

10. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the concerned Principal Magistrate, Juvenile Justice Board shall proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

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

(KIRTI SINGH)
JUDGE

20.02.2025
amandeep

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No