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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision: 13.01.2025

Anurag @ Shivam

...Petitioner

Versus

State of U.T. Chandigarh

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Rohit Mittal, Advocate and
Mr. Manav Ahlawat, Advocate
for the petitioner

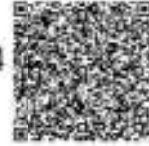
Mr. Manish Bansal, P.P. for U.T. Chandigarh and
Mr. Navjit Singh, Advocate

KIRTI SINGH, J.(Oral)

The jurisdiction of this Court under Section 439 Cr.PC. has been invoked for grant of regular bail to the petitioner in case FIR No.152 dated 16.09.2023, under Section 363 IPC (Sections 366, 376(3) IPC and Section 6 of POCSO Act added later on) registered at Police Station Sector 31, Chandigarh.

2. The contents of the above-mentioned FIR are reproduced herein below:-

“Statement of Shyam Pyari W/o Salendra R/o 655 Hallomajra Chandigarh, Age 40 Years Mob. 9815402625 stated that I live with my family in a rented accommodation at the above mentioned address and I am a housewife and my husband Salendra works as a laborer in Barwala. I have sons and one daughter named Kareena is 15 years old and has studied in 7th class. Today it must have been around 12:30 PM when I, my daughter Kareena and both the sons



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were at home and Kareena suddenly left the house without informing anyone. When we inquired in the neighbors they told them that Kareena just left the house from downstairs and I have searched for her, along with my family but she has not been found and now I have come to the police station to lodge a complaint. Who is my daughter's height is 4 feet 5 inches, slim, whitish complexion, with black eyes, who is wearing a pink colour suit, blue palazzo, black dupatta and dark red colour slippers, I do not want to give any advertisement of my daughter Kareena in the newspaper or TV, that my daughter Kareena should be searched, I have heard the statement in writing, which is okay, RTI Shyam Pyaar attested ASI Balbir Singh 3649/CP PS 31 U.T. Chandigarh at this time Shyam Pyar W/o Salinder R/o 655 Hallomajra Chd. age 40 years came to the police station and presented a written application to the ASI. On the compelled application, a case was found to be registered, crime under Section 363 IPC against unknown son, on which case no. Case No. 152/2023 person, under Section 363 IPC against unknown person, after registering the case at the police station, I myself took the original complaint along with the copy of the FIR and I, along with ASI C. Sushil Kumar 6406/CP, L/C Ravita 2589/CP along with the plaintiff, left for investigation at the spot, police station or UT Area. Copy of the FIR be served. Note Parties were informed about the Legal Add Service that they have the right to avail the Legal Service and they can avail it.”

3. Learned counsel for the petitioner submits that petitioner has been falsely implicated in this case. He further submits that the petitioner and the victim were in a consensual relationship. The petitioner has been in custody since 19.12.2023 and the victim has turned hostile.

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. As per the custody

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certificate, the petitioner has been in custody since 19.12.2023. He on instructions submits that charges were framed on 24.07.2024 and out of 25 prosecution witnesses, 02 prosecution witnesses have been examined.

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

6. Admittedly, the charges were framed on 24.07.2024 and out of total 25 prosecution witness, 02 prosecution witnesses have been examined till date. The petitioner is in custody since 19.12.2023. Moreover, the victim has turned hostile. Further detention of the petitioner will not serve any useful purpose and will be violation of 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.**

7. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in **"Abdul Rehman Antulay and others v. R.S. Nayak and another", 1992(2) RCR (Criminapl) 634** observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

8. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, the charges have been framed and only two prosecution witness have been examined till date. Therefore, this Court is of the view that further incarceration of the petitioner would not serve any purpose.



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9. 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 regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. 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 they are 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.

10. 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.

11. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

13.01.2025

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(KIRTI SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No