



CRM-M-4887-2025(O&M)

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

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**CRM-M-4887-2025(O&M)
Decided on: 27.02.2025**

Mahesh @ Happy

. . . Petitioner(s)

Versus

State of Haryana

. . . Respondent(s)

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

PRESENT: Ms. Pooja Jaglan, Advocate for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

KIRTI SINGH, J. (Oral)

This second petition under Section 439 Cr.P.C. has been filed for grant of regular bail to the petitioner in case FIR No.787 dated 23.08.2023, under Section 376 of IPC, registered at Police Station Samalkha, District Panipat.

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

“To Chowki Incharge Samalkha Panipat, Sir, it is request that I, Anjali D/O Ramkaran S/O Dalel Singh, resident of village Lalhedi Kalan, police station Barhi, district Sonipat at present tenant Dharambir S/O: Subhe Singh Kaliramana Pana Samalkha, 1 am 21 years old, 1 am married, due to differences with my husband, a court case is going on. hence I am living with my parents, which was on dated 22.08.23 at around 10.00 pm due to my ill health, my mother Nirmala took me to the peer near the mosque in Ward No. 6 Sarai Mahaula to get dusted (Jhara), where my brother Vikas and Umesh alias Happy Baba were also on the peer and after that Happy Baba dusted (Jhara) me. At around 11.30 PM my mother left from there and my brother Vikas was there, Umesh @ Happy Baba took me inside on the pretext of dusting me, time around 12.15 AM and he



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started doing wrong things (rape) with me and I am not in my consciousness. My brother Vikas, hearing the voice, freed me from Umesh alias Happy Baba and brought me to the government hospital, Samalkha, where I am now completely Consciousness. Please take legal action against Umesh alias Happy Baba. Thank you. Applicant”

3. Learned counsel appearing for the petitioner submits that petitioner has been falsely implicated in this case. The prosecutrix is habitual of filing such cases and she has also lodged an FIR No.188 dated 23.06.2023 against her husband and his family and levelled allegations of commission of wrong act upon her by her father in law. It has also been argued that as per Section 164 Cr.P.C. statement the petitioner had given a Jalebi to the prosecutrix and she became unconscious after which the petitioner committed wrongful act with her. However, as per the FSL report (Annexure R-4), no common poison/drug has been detected. The petitioner has undergone an actual custody of 01 year, 06 months and 02 days.

4. *Per contra* learned State counsel has opposed the bail and submits that the petitioner was actively involved in the commission of the offence. He has filed custody certificate and reply in Court today and the same are taken on record. As per custody certificate, the petitioner has undergone actual custody of 01 year, 06 months and 02 days. He on instructions from investigating officer submits that out of total of 16 prosecution witnesses, 09 have been examined. The petitioner was involved in one more case but he is on bail in that case. He, however, submits that in view of the serious allegations against the petitioner, she is not entitled to the concession of regular bail.

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



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6. A perusal of the case in hand transpires that the petitioner is behind the bars since 24.08.2023. 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 16 prosecution witnesses, 09 have been examined. The material witnesses have been examined. As per the FSL report, no common poison/drug has been detected. 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.**

7. Accordingly, 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 she 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/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

8. In case of breach of any of the above conditions, the



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prosecution shall be at liberty to move an application for cancellation of bail before this Court.

9. 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.

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

(KIRTI SINGH)
JUDGE

27.02.2025

Kapil

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