

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

222

CRM-M-2381-2023

Date of Decision: 20.01.2023

Mandeep Kaur**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. A.S. Khinda, Advocate for the petitioner

Mr. Digvijay Nagpal, AAG, Punjab
(assisted by ASI Avtaar Singh)

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No.193 dated 06.07.2020 (Annexure P-1) under Sections 302, 328, 203 & 34 IPC (Section 376-D IPC and Section 6 of POCSO Act added subsequently), registered at Police Station Sultanpur Lodhi, District Kapurthala.

2. Learned counsel for the petitioner, *inter alia* contends that husband of the petitioner who is co-accused has already been released on regular bail vide order dated 30.08.2022 (Annexure P-4) passed by Coordinate Bench of this Court. The petitioner is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Kapurthala. The petitioner has deep roots in the society. There is no possibility of flee from justice.

3. Custody Certificate dated 19.01.2023 is taken on record. Registry is directed to tag the same at appropriate place.

4. Learned State counsel, on instructions from ASI Avtaar Singh, submits that petitioner is in custody since 08.07.2020. Challan stands presented and charges stands framed. Out of 24 witnesses, 6 have been examined. He further submits that FIR initially was registered under Section 302 and other Sections of IPC, however, on receipt of medical report, Section 376-D was added and two boys, who at present are in custody, were arrested. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

5. A two judge Bench of Hon'ble Supreme Court in ***Satender Kumar Antil v. CBI; (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used

sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

6. Intent of arrest and reason of denial of bail is to:

- i) Secure the appearance of the accused at the time of trial;
- ii) allay possibility of repeating of offence & jeopardising own life on account of grim prospect of being convicted; and
- iii) Avoid possibility of tampering of evidence and security of witnesses who may be pressurised or maltreated.

7. A person who seeks to be liberated must take judgment and serve sentence in the event of his conviction. The nature of the crime charged, severity of punishment prescribed, prime facie available evidences, history & background of the accused may indicate that any amount of bond and surety is not going to secure presence of accused, at the time of conviction. Detention or arrest not only deprives a person from his fundamental right of personal liberty guaranteed by article 21 but also freedom guaranteed by article 19(1) of our Constitution.

8. Keeping in mind:

- i) The Petitioner is in custody since 08.07.2020;
- ii) Police report under section 173 of Cr.P.C. stands filed, charges stand framed;

- iii) There are 24 prosecution witnesses and till date only 6 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future;
- iv) The complainant stands examined and FIR was lodged after 10 days from the date of alleged incident;
- v) The co-accused stands released on regular bail vide order dated 30.08.2022 (Annexure P-4) passed by Coordinate Bench of this Court;
- vi) As prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody;
- vii) Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act, Companies Act are not applicable in the case in hand;
- viii) The Petitioner is not involved in any other criminal case;
- ix) The Petitioner is permanent resident of District Kapurthala; and
- x) prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of

Petitioner being flee from justice or tempering the evidences or winning over/threatening the witnesses;

this Court is of the considered opinion that present petition deserves to allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaqa/Duty Magistrate concerned.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

20.01.2023
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No