

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-6520-2023 (O&M)
Date of decision : 01.06.2023

Anil Kumar @ Lilla ... Petitioner(s)

Versus

State of Haryana ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ravinder Malik, Advocate for the petitioner.

Mr. Saurabh Girdhar, AAG Haryana.

ALKA SARIN, J. (ORAL)

1. This is the second petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.04 dated 05.01.2020 under Sections 376-D, 376-DA, 452, 506 of the India Penal Code, 1860 (IPC) and Sections 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Madhuban, District Karnal. The first petition being CRM-M-43017-2020 was dismissed as withdrawn vide order dated 22.01.2021.
2. Learned counsel for the petitioner would contend that the petitioner has been in custody for a period of 3 years, 4 months and 25 days. It is further the contention that the challan was filed on 14.02.2020 and out of 16 witnesses, 5 witnesses are yet to be examined. It is further the

contention that the prosecutrix as well as the father of the prosecutrix, who is the complainant, have already been examined in the present case. He would further contend that the petitioner is not involved in any other case and further that the co-accused, namely, Sachin @ Sachin Chalia has since been granted bail by this Court vide order dated 06.01.2023 passed in CRM-M-45023-2022.

3. *Per contra*, learned counsel for the respondent-State, based on the status report filed by way of an affidavit of Manoj Kumar, HPS, Deputy Superintendent of Police, Gharaunda, District Karnal, has contended that the petitioner is the main accused and that he had suffered a disclosure statement admitting the commission of the crime and had got recovered a mobile phone make Oppo A-9. However, learned counsel for the State is not in a position to deny that the challan in the present case was filed on 14.02.2020 and out of 16 witnesses, 5 witnesses are yet to be examined and further that there is no other case pending against the petitioner. He is also not in a position to deny that the co-accused, namely, Sachin @ Sachin Chalia has since been granted bail by this Court vide order dated 06.01.2023 passed in CRM-M-45023-2022.

4. Heard.

5. In the present case, the petitioner has been in custody for a period of 3 years, 4 months and 25 days. There is no other case pending against the petitioner. The complainant who is the father of the prosecutrix and the prosecutrix already stand examined. The challan was filed on 14.02.2020 and out of 16 witnesses, 5 witnesses are yet to be examined. It

has also been stated in the status report that there is no medical evidence in the present case since the examination of the prosecutrix was conducted after a period of 44 days of the alleged incident having taken place. The co-accused, namely, Sachin @ Sachin Chalia has since been granted bail by this Court vide order dated 06.01.2023 passed in CRM-M-45023-2022.

6. Hon'ble Supreme Court in the case of **Satender Kumar Antil vs. CBI [(2022) 10 SCC 51]** has held as under :

“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.”

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7. In view of the above and keeping in view the long period of incarceration of the petitioner, without commenting upon the merits of the case, I find it to be a fit case to grant the concession of regular bail to the petitioner. The petitioner is directed to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate/Trial Court concerned.

8. However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

9. It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

10. Disposed off. Pending applications, if any, also stand disposed off.

01.06.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO