

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

204

CRM-M- 11419 of 2022(O&M)

Date of Decision: 06.01.2023

Shivam

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Naresh K. Chhokar, Advocate
for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana

JAGMOHAN BANSAL, J. (Oral)

CRM- 22861 of 2022

Allowed as prayed for.

Compromise and affidavit dated 15.6.2022 executed by mother of the complainant (Annexures P-7 and P-8) are taken on record. Registry is directed to tag the same at an appropriate place.

CRM-M- 11419 of 2022

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No. 225 dated 13.9.2021 under Section 6 of POCSO Act, 2012 and Section 506 of the Indian Penal Code, 1860, registered at Police Station NIT Faridabad, District Faridabad.

2. Learned counsel for the petitioner *inter alia*, contends that

petitioner is a distinct relative of the prosecutrix. The petitioner is in custody since 19.9.2021. There is stark contradiction in the statement of prosecutrix. In one statement, she had stated that petitioner had taken away her to a restaurant and in the another statement, she had stated that the petitioner had taken away her to his friend's house. Before her mother, she had stated that she was taken away to a park. The prosecutrix and her mother have already been examined as well as cross examined. There are total 20 witnesses and 03 material witnesses have already been examined. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is not involved in any other FIR. The petitioner is a student of 10+2 and staying with his parents.. The petitioner has deep roots in the society. There is no possibility of flee from justice.

3. Learned State Counsel submits that challan has already been filed and charges stand framed. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

4. 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.”

5. 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;
- iii) Avoid possibility of tampering of evidence and security of witnesses who may be pressurised or maltreated.

6. 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 and 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.

7. Keeping in mind:

- i) The Petitioner is in custody since 19.9.2021;

- ii) Police report under section 173 of Cr.P.C. stands filed and charges stand framed;
- iii)The prosecutrix stands examined as well cross-examined;
- iv) There are total 20 witnesses and 3 material witnesses have already been examined. There is abysmally low possibility of conclusion of trial in near future;
- v) Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act, Companies Act are not applicable in the case in hand;
- vi) The Petitioner is not involved in any other criminal case;
- vii)The Petitioner is a student of 10+2 and staying with his parents;
- viii)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.

(JAGMOHAN BANSAL)
JUDGE

6.1.2023
paramjit

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>