

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

220 +107

CRM-M-18441-2022 (O&M)

Date of Decision: 19.01.2023

Ankit

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Gaurav G.S. Chauhan, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

JAGMOHAN BANSAL, J. (Oral)

CRM-2613-2023

Application for placing on record cross-examination of complainant (Annexure P-2) is allowed. Registry is directed to tag the same at appropriate place.

CRM stands disposed of.

CRM-M-18441-2022

1. The petitioner through instant petition under Section 439 Cr.P.C. is seeking grant of regular bail in FIR No.84 dated 14.12.2021 under Sections 376(2)(n) & 506 of Indian Penal Code, 1860, registered at Police Station Women Cell, District Rohtak.

2. Learned counsel for the petitioner, *inter alia* contends that prosecutrix at the relevant time was major and mother of two children.

The prosecutrix and petitioner had entered into a written agreement to

live in a relation. The petitioner at that point of time was unqualified for the purpose of marriage because he was less than 21 years. The prosecutrix has been declared hostile and petitioner is in custody since 31.12.2021. The petitioner is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence.

3. Custody certificate dated 18.01.2023 is taken on record. Registry is directed to tag the same at appropriate place.

4. Learned State Counsel submits that police report stands filed, charges stand framed and prosecutrix stands examined. She further submits that out of 12 witnesses, 1 witness i.e. prosecutrix has already been examined. 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;
- 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 31.12.2021;
- ii) Police report under Section 173 of Cr.P.C. stands filed, charges stand framed;
- iv) There are 12 prosecution witnesses and till date only 1 has been examined, thus, there is abysmally low possibility of conclusion of trial in near future;
- v) The material witness i.e. prosecutrix stands turned hostile;
- 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) 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

19.01.2023
Mohit Kumar

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