

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

209

CRM-M-22637-2022

Date of Decision: 09.01.2023

Satpal @ Maddi

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Manoj Pundir, Advocate
for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No. 228 dated 13.09.2021 under Sections 6 and 18 of POCSO Act, 2012 (Sections 376 (3) and 506 of IPC were added later on), registered at Police Station Pratap Nagar, District Yamuna Nagar.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner is in custody since 14.09.2021. The petitioner has been charged under Section 6 of POCSO Act as well as 376(3) of IPC. Section 6 of POCSO Act and 376(3) of IPC are *pari materia* and require aggravated penetrative sexual assault whereas statement of prosecutrix as well as medical record is belying story of the prosecution. The petitioner was working as labourer with the complainant and just to get rid of wages of the petitioner, the complainant has implicated the petitioner. The petitioner is not involved in any other offence. The petitioner is 32 years old man and

he has been wrongly implicated in the commission of alleged offence. The petitioner is not involved in any other FIR. The petitioner is permanent resident of District Yamuna Nagar and staying with family members. The petitioner has deep roots in the society. There is no possibility of flee from justice.

3. Learned State Counsel submits that police report has already been filed and charges stand framed. He further submits that all the prosecution witnesses have already been examined and the next date before the trial Court is 22.02.2023 for defence evidence. 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 14.09.2021;
- ii) Police report under section 173 of Cr.P.C. stands filed, charges stand framed;
- iii) All the prosecution witnesses have already been examined;
- iv) The prosecutrix has not supported the case of the prosecution and even though, she had disclosed the incident;
- v) The medical reports do not support version of the prosecution rather support version of the victim before trial

Court.

- vi) From the statement of prosecutrix before trial Court as well as the medical reports, it comes out that prima facie it is not a case of offence under Section 6 of POCSO Act and 376 (3) of IPC;
- 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;
- xi) The Petitioner is permanent resident of District Yamuna Nagar and staying with family members;
- 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.

(JAGMOHAN BANSAL)
JUDGE

09.01.2023
anju

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