

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

217

**CRM-M-32820-2022  
Date of Decision: 25.01.2023**

**Rohtash**

**...Petitioner**

**Versus**

**State of Haryana and Another**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. P.K. Ganga, Advocate for the petitioner  
Ms. Dimple Jain, AAG, Haryana

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**JAGMOHAN BANSAL, J. (Oral)**

1. The petitioner, through instant petition under Section 439 Cr.P.C. read with Section 482 Cr.P.C., is seeking regular bail in FIR No.47 dated 16.02.2022 (Annexure P-1) under Sections 323, 366, 376(2)(n), 450, 506 & 509 IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station Nathusari Chopta, District Sirsa.

2. As per FIR, allegation against the petitioner is that petitioner made physical relation with prosecutrix on the pretext of marriage. The petitioner in June 2020 made physical relation with the prosecutrix without her consent and thereafter he came to her home many times and made physical relations. On 08.02.2021, prosecutrix and petitioner came to Chandigarh for seeking protection from High Court but petition was not filed. They lived at Ambani Hotel at Chandigarh and Sabuj Hotel for

6 days and during this period, they made physical relations. The petitioner is a drug addict and he was admitted in Drug De-addiction Center. He misrepresented that he is unmarried whereas he was married at the time of making physical relations with the prosecutrix.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix filed application dated 04.02.2021 before SHO, Nathosari Chopta, District Sirsa seeking protection of life and liberty. In the said application, the prosecutrix had specifically mentioned that she does not want to marry as per choice of her family members and she wants to marry with Rohtash Kumar when he will take divorce from his earlier wife. The prosecutrix at the time of alleged offence was 26 years old and she is B.A. (second year pass). The prosecutrix stands examined, thus, there is no apprehension of threat to the prosecutrix. The petitioner is in custody since 21.04.2022. The prosecutrix had executed two Deeds of Live-in Relationship dated 07.12.2020 and 04.02.2021 with the petitioner, thus, it is quite evident that relations between the parties were voluntary and without coercion. 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 Sirsa. There is no possibility of flee from justice.

4. Custody certificate dated 24.01.2023 is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 15 witnesses, 6 have already been examined which includes the prosecutrix. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

6. 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.”*

7. 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.

8. 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.

9. Keeping in mind:

- i) The Petitioner is in custody since 21.04.2022;
- ii) Police report under section 173 of Cr.P.C. stands filed, charges stand framed;
- iii) There are 15 prosecution witnesses and till date 6 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future;

- iv) The material witness i.e. prosecutrix stands examined;
- v) The prosecutrix at the time of alleged offence was major and she had executed Deeds of Live-in Relationship on two different occasions. She had also filed an application with police authorities seeking protection of life and liberty wherein she has specifically disclosed that petitioner is married and she would marry as and when petitioner would seek divorce from his earlier wife;
- 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 Sirsa;

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.

10. 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

25.01.2023  
Mohit Kumar

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |