

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

CRM-M- 38200 of 2022(O&M)

Date of Decision: 13.01.2023

Ritesh Kumar

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Kulwinder Singh, Advocate with
Mr. N.S.Sindher, 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. 357 dated 7.9.2021 under Sections 354A, 376 and 506 of the Indian Penal Code, 1860, Section 6 of POCSO Act and 25 of Arms Act, registered at Police Station Model Town Panipat, District Panipat (Challan presented under Sections 363, 366, 376, 506 IPC and 4 of POCSO Act).

2. Learned counsel for the petitioner *inter alia*, contends that as per FIR, alleged incident took place on 6.9.2021 whereas during the course of cross examination, the prosecutrix has deposed that she had gone to her tuition alongwith her brother and came back with her brother. Before the Medical Officer, the prosecutrix had made a different statement. The prosecutrix had further stated that she does not know the petitioner. The petitioner is in custody since 11.9.2021 and he is not involved in any other offence. The challan has already been presented and charges stand framed.

The petitioner is permanent resident of Panipat 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. There are total 19 witnesses and 02 have 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.

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:

1. The Petitioner is in custody since 11.9.2021;
2. Police report under section 173 of Cr.P.C. stands filed and charges stand framed;
3. The prosecutrix has not supported case of the prosecution and her statement before the Medical Officer is different from allegations levelled in FIR;
4. There are total 19 witnesses and only 02 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future;
5. 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;

6. Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act, Companies Act are not applicable in the case in hand;
7. The Petitioner is not involved in any other criminal case;
8. The Petitioner is permanent resident of Panipat and having family members;
9. 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

13.1.2023

paramjit

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