

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

204

CRM-M-41267-2022 (O&M)

Date of Decision: 04.01.2023

Gurpreet Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Rahul Arora, Advocate
for the petitioner.

Mr. Digvijay Nagpal, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No. 170 dated 12.10.2020 under Sections 363, 366-A of the Indian Penal Code, 1860, (offence under Section 376 IPC and Section 6 of POCSO Act added later on) registered at Police Station City Jalalabad, District Fazilka.

2. Learned counsel for the petitioner *inter alia*, contends that prosecutrix is staying with parents of the petitioner as legally wedded wife. She is having one child from the wedlock. The petitioner is in custody since 23.11.2021. The prosecutrix had refused for medical examination, thus, no medical report is available. There is no possibility of conviction because prosecutrix is staying with parents of the petitioner and not with her parents. The mother of the prosecutrix had furnished affidavit dated 13.12.2021 (Annexure P-5/T) disclosing that her daughter is staying with

parents of the petitioner as wife of the petitioner and she has got a child

from this wedlock. She does not want to take any action against the petitioner. The challan had already been presented and charges were framed on 27.05.2022. The petitioner 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 Jalalabad, District Fazilka and staying with his 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. 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.”

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 & 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 23.11.2021;
- ii) Police report under section 173 of Cr.P.C. stands filed and charges stand framed;
- iii) The prosecutrix is staying with parents of the petitioner and is having one child from the wedlock;
- iv) The prosecutrix has not repudiated the marriage and there is no objection on the part of the parents;
- v) The complainant i.e. mother of the prosecutrix had furnished affidavit dated 13.12.2021 (Annexure P-5/T) deposing that she does not

want to take any action against the petitioner;

vi) Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act , Companies Act are not applicable in the case in hand;

vii) The Petitioner is not involved in any other criminal case;

viii) The Petitioner is permanent resident of Jalabad, District Fazilka and having family members;

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.

(JAGMOHAN BANSAL)
JUDGE

04.01.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>