

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

215+1

CRM-M-46848-2022

Date of Decision: 27.01.2023

Vijay @ Vijay Singh**...Petitioner****Versus****State of Punjab and Another****...Respondents****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Ritesh Pandey, Advocate for the petitioners

Mr. Amish Sharma, 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.31 dated 18.03.2022 (Annexure P-1) under Sections 366, 376-D, 342 & 120-B, IPC registered at Police Station Kathu Nangal, District Amritsar Rural.

2. As per FIR, the prosecutrix approached police authorities and averred that petitioner used to follow her and on 29.01.2022 while she was awaiting for a bus, petitioner along with his friend abducted her and took away her in the house of his friend Gammi where he committed rape and kept her locked in the house.

3. Learned counsel for the petitioner, *inter alia* contends that as per status report filed by State in CRM-M-38381-2022, the marriage certificate (Annexure P-2) is genuine. The prosecutrix has solemnized marriage with the petitioner and during her cross-examination, she has not supported case of the prosecution. The petitioner is in custody since

02.06.2022. The petitioner is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 25.01.2023 is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State Counsel submits that police in its investigation has found marriage certificate genuine and it is factually correct that prosecutrix has not supported case of the prosecution. He further confirms that petitioner is not involved in any other offence. There are total 21 witnesses, out of which 5 stand examined which includes the prosecutrix.

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, *prima 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 02.06.2022;

- ii) Police report under section 173 of Cr.P.C. stands filed, charges stand framed;
- iii) There are 21 prosecution witnesses and till date 5 witnesses 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 and she has turned hostile;
- v) The petitioner and prosecutrix have solemnized marriage which stands confirmed by the State;
- 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/Illaq/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.

11. Learned counsel for the petitioner pointed out that challan has been presented under Section 376D IPC, apart from other sections, however, in the Custody Certificate, in place of Section 376D, Section 376 has been inadvertently mentioned. The Trial Court and Jail Authorities would take care of this fact while accepting bail bonds and releasing the petitioner.

(JAGMOHAN BANSAL)
JUDGE

27.01.2023
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No