

CRM-48473-2022 IN/AND
CRM-M-54168-2021

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105+211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-48473-2022 IN/AND
CRM-M-54168-2021
Date of Decision:10.01.2023

PRINCE KUMAR

..... Petitioner

Versus

STATE OF PUNJAB

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Aman Goyal, Advocate
for the petitioner.

JAGMOHAN BANSAL, J. (Oral)
CRM-48473-2022

Application for placing on record Annexure P-3 to Annexure P-7, is allowed, in view of the averments made in the application, duly supported by affidavit. Said annexures are taken on record. Office to append the same at appropriate place.

CRM stands disposed of.

CRM-M-54168-2021

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No. 78 dated 20.04.2021 under Sections 376 and 506 of the Indian Penal Code, 1860, registered at Police Station Jamalpur, District Ludhiana.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner is in custody since 26.04.2021. The prosecutrix was not minor at the time of commission of alleged offence. As per prosecutrix alleged offence was committed on 15.06.2020 whereas FIR came to be

registered on 20.04.2021. In medical examination, no injury on person was found and doctor in her cross-examination has stated that possibility of consensual sex cannot be ruled out. The prosecutrix has already been examined as well as cross-examined and there are material contradictions in her statements made under Section 161 & 164 of Cr.P.C. vis a vis before the Trial Court. The petitioner is an innocent person and he has not committed the alleged offence. The petitioner is not involved in any other offence. The petitioner is permanent resident of District Ludhiana and staying with his family members. There is no possibility of flee from justice. The continuous detention is causing irreparable loss, mental agony, embarrassment and humiliation to petitioner as well entire family.

3. Learned State Counsel submits that police report has already been filed and there are 14 witnesses and till date 3 witnesses 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 & 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. The object of arrest during investigation is neither

punitive nor preventive. 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 26.04.2021;
- ii) Police report under section 173 of Cr.P.C. stands filed, charges stand framed and prosecutrix has already been examined as well as cross-examined.
- iii) The alleged incident took place on 15.06.2020 whereas FIR was registered on 20.04.2021 and victim is not minor.
- iv) There are 14 witnesses and till date 3 witnesses have been examined, thus possibility of conclusion of trial is abysmally low;
- v) 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;
- 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 District Ludhiana and staying with 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.

(JAGMOHAN BANSAL)
JUDGE

10.01.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>