

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

224

CRA-S-2589-2022

Date of Decision : 12.01.2023

Amit

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Gaurav Grover, Advocate and
Ms. Charu Sharma, Advocate
for the appellant.

Ms. Dimple Jain, AAG, Haryana.

JAGMOHAN BANSAL, J. (Oral)

1. The appellant through instant appeal is seeking setting aside of impugned order dated 25.08.2022 whereby Additional Sessions Judge/Fast Track Court (POCSO), Panipat, has dismissed bail application of the appellant in a case arising out of FIR No. 142 dated 11.10.2021 under Section 6 of POCSO Act, Sections 343, 365, 506, 376(2)(n), 376(3) of IPC and Section 3(2)(v) of SC&ST Act, registered at Police Station Bapoli, Panipat.

2. Learned counsel for the appellant *inter alia*, contends that the appellant and prosecutrix were friends and she had left home as per her own will. It was prosecutrix who administered sleeping pills to her family members. The prosecutrix remained absent from home, however, parents did not come forward to lodge FIR. The prosecutrix consumed pills and thereafter, she was got admitted in hospital. It is prosecutrix who had lodged the FIR and not the parents. The prosecutrix has already been

examined and in the medical report, nothing disclosing the commission of alleged offence of rape has been found. Provision of Section SC&ST Act has been invoked just to increase the gravity of offence. The challan has already been presented and charges stand framed. The appellant has been wrongly implicated in the commission of alleged offence. The appellant is not involved in any other FIR. The appellant 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 17 witnesses and 05 have been examined. The appellant is involved in the commission of grave offence, thus, no leniency is warranted and release of appellant 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. 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 appellant is in custody since 14.10.2021;
- ii) Police report under section 173 of Cr.P.C. stands filed and charges stand framed;
- iii) There are total 17 witnesses and 05 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future;
- iv) The medical report is not supporting the case of prosecution;
- v) The prosecutrix had administered sleeping pills to her family members before leaving home and thereafter, she consumed

after coming back to home.

- 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 appellant is not involved in any other criminal case;
- ix) The appellant is permanent resident of District Panipat and having family members;
- x) Prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of appellant being flee from justice or tempering the evidences or winning over/threatening the witnesses;

this Court is of the considered opinion that present appeal deserves to allowed and accordingly allowed. The order dated 25.08.2022 passed by Additional Sessions Judge/Fast Track Court (POCSO), Panipat, is set aside and appellant is granted concession of regular bail in FIR No. 142 dated 11.10.2021 under Section 6 of POCSO Act, Sections 343, 365, 506, 376(2)(n), 376(3) of IPC and Section 3(2)(v) of SC&ST Act, registered at Police Station Bapoli Panipat. The appellant is ordered to be released on bail subject to conditions as may be imposed by trial Court/Illaqa/Duty Magistrate concerned.

12.01.2023

anju

(JAGMOHAN BANSAL)
JUDGE

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