

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

220

CRM-M-60410-2022

Date of Decision: 20.01.2023

Jaswinder

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Gyan Parkash Saini, Advocate for
Mr. Lalit Mohan Brar, Advocate for the petitioner
Ms. Priyanka Sadar, AAG, Haryana
Mr. Rahul Kumar Adia, Advocate for the complainant

JAGMOHAN BANSAL, J. (Oral)

1. Compromise dated 18.01.2023 filed by learned counsel for the petitioner is taken on record. Registry is directed to tag the same at appropriate place

2. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No. 274 dated 14.05.2022 under Sections 376 (2) (n) and 506 of IPC, registered at Police Station City Jagadhri, District Yamunanagar.

3. Learned counsel for the petitioner, *inter alia* contends that the prosecutrix was 24 years old at the time of alleged incident and she had admitted that there was relation between the parties for last 08 years. It is a case of dispute on account of marriage. The allegation of the prosecutrix herself is that the petitioner had refused to marry her. Now the prosecutrix has got married on 20.09.2022. The petitioner is in custody since 10.08.2022. 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 and is ready to join investigation and face trial. There is no possibility of flee from justice. The arrest is causing irreparable loss, mental agony, embarrassment and humiliation to petitioner as well entire family. He further submits that the parties have entered into a compromise.

4. Mr. Rahul Kumar Adia, Advocate appeared on behalf of prosecutrix and filed his Power of Attorney. The same is taken on record and Registry is directed to tag at appropriate place.

5. Learned counsel for the prosecutrix, *inter alia* submits that prosecutrix has got married somewhere else and she does not carry any grouse against the petitioner. She has no objection if petition is allowed and petitioner is released on bail.

6. Custody Certificate dated 19.01.2023 is taken on record. Registry is directed to tag the same at appropriate place.

7. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 11 witnesses, none has 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.

8. 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.”

9. 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.

10. 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.

11. Keeping in mind:

- i) The Petitioner is in custody since 10.08.2022;
- ii) Police report under section 173 of Cr.P.C. stands filed, charges stand framed;
- iii) There are 11 prosecution witnesses and till date none has been examined, thus, there is abysmally low possibility of conclusion of trial in near future;
- iv) The prosecutrix was major at the time of alleged offence and her grouse was that petitioner had refused to marry her and now she has got married with another boy. She has no objection if petitioner is released on bail;
- 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 Yamuna Nagar;

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.

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.

(JAGMOHAN BANSAL)
JUDGE

20.01.2023
Mohit Kumar

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