

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

212

CRM-M-58465-2022

Date of Decision: 09.02.2023

Surender Kumar Yadav

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Vinod Ghai, Senior Advocate with
Ms. Kanika Ahuja, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana
(assisted by ASI Rajpal Singh)

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No.184 dated 19.09.2022 (Annexure P-1) under Section 8 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Sector 20, Panchkula, District Panchkula.

2. As per FIR, the case of prosecution is that on 19.09.2022, the daughter of the complainant went to Mrs. Sonika Yadav for her tuition. When the prosecutrix came back after getting tuition, she was frightened and on being asked she disclosed that father of the teacher (petitioner) has kissed her and licked her cheek.

3. Mr. Vinod Ghai, learned senior counsel for the petitioner, *inter alia* contends that petitioner is a 63 years old man. He belongs to

State of Madhya Pradesh and few days prior to the alleged incident he along with wife had come to Panchkula to stay with his daughter whose husband is working in Army. The petitioner used to help her daughter in her tuition work. On the day of alleged incident, there were 12 children and all the children were getting tuition at the same place, thus, there was no possibility of the alleged incident. The petitioner actually checked homework of the prosecutrix and scolded her. The prosecutrix got annoyed and present FIR came to be registered. 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. Learned State Counsel submits that as per Custody Certificate, the petitioner is in custody since 20.09.2022. The challan has already been filed and charges stand framed. The averment on the part of the petitioner that there is false implication is factually incorrect. She further submits that there are 15 witnesses and till date no witness has been examined.

5. 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.”

6. 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.

7. 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.

8. Keeping in mind:

- i) The petitioner is in custody since 20.09.2022 and he is 63 years old man;
- ii) Police report under Section 173 of Cr.P.C. stands filed and charges stand framed;
- iii) There are 15 prosecution witnesses and till date no witness been examined, thus, there is abysmally low possibility of conclusion of trial in near future;
- iv) 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;
- v) Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act, Companies Act are not applicable in the case in hand;

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

09.02.2023
Mohit Kumar

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