

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

211

CRM-M-59812-2022

Date of Decision: 09.01.2023

Sukha

..... Petitioner

Versus

State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr.Riffi Birla, Advocate  
for the petitioner.

Mr. Digvijay Nagpal, 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. 133 dated 13.08.2021 under Sections 365/368/506/120-B IPC (Section 376-D, 344, 323 IPC and Section 6 of POCSO Act, 2012 added later on) registered at Police Station Sadar Ferozepur, District Ferozepur.

2. Learned counsel for the petitioner *inter alia* contends that the prosecutrix had lodged FIR No.80 of 2021 at Police Station Sadar Ferozepur, District Ferozepur against Raman S/o Ranga and Lovepreet Singh son of Prem Singh residents of village Dulchi Ke alleging rape. In the FIR in question, there are same set of allegations against Raman and Loverpreet Singh and the petitioner has been implicated alleging that the petitioner and three more persons i.e. Jaima son of Mal Singh, sonu son of Mal singh and Manjeet Kaur wife of Jaima Singh, all residents of village Dulchi Ke had kidnapped the victim. There is no allegation of rape against

the petitioner and allegation of rape is only against Raman. As per FSL report (Annexure P-2), human semen was not detected on vaginal swabs stated to be of prosecutrix. The petitioner is not involved in any other offence. The petitioner is permanent resident of District Ferozepur and staying with family members. The petitioner has deep roots in the society. There is no possibility of flee from justice.

3. Learned State Counsel submits that the main accused i.e Raman has already been arrested and challan stands presented against the petitioner as well as co-accused. He further submits that there are 23 witnesses and 04 witnesses have already 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.

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;
- 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 29.06.2022;
- ii) Police report under section 173 of Cr.P.C. stands filed, charges stand framed;
- iii) There are 23 prosecution witnesses and till date, only 04 witnesses have been examined, thus, there is abysmally low possibility of conclusion of trial in near future;
- iv) There is no allegation of rape against the petitioner;
- 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) The Petitioner is permanent resident of District Ferozepur and staying with family members;
- viii) 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.

( JAGMOHAN BANSAL )  
JUDGE

09.01.2023  
*anju*

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