

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

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CRM-M-60987-2022

Date of Decision : 10.01.2023

Vicky @ Vikas Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr.Kuldip Singh, 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. 95 dated 10.07.2022 under Sections 363, 366-A, 120-B of IPC (Sections 465, 468, 471 and Section 4 of POCSO Act added later on), registered at Police Station Sadar Jalalabad, District Fazilka.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner is in custody since 11.07.2022. The allegation against the petitioner is that he helped to elope the complainant with main accused. The main accused namely Dharampal Singh has already been arrested. The co-accused namely Harnam Singh has already been released on regular bail vide order dated 29.09.2022 passed by this Court in CRM-M-39442-2022. The petitioner is not involved in any other offence. The petitioner is 21 years old young boy. The petitioner is permanent resident of District Fazilka and staying with his parents. The petitioner has deep roots in the

society. There is no possibility of flee from justice.

3. Custody certificate dated 07.01.2023 is taken on record.

Registry is directed to tag the same at appropriate place.

4. Learned State Counsel on instructions from ASI Hardev Singh submits that on the request of the petitioner, an enquiry was conducted wherein the petitioner has been found innocent, though, the enquiry has not been approved by the Competent Authority. The main accused Dharampal Singh has already been arrested. Challan has been presented on 29.08.2022 and charges have been framed on 19.11.2022. He further submits that there are 11 prosecution witnesses and none of them 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;

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 11.07.2022;

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 of them has been examined, thus, there is abysmally low possibility of conclusion of trial in near future;

iv) Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act, Companies Act are not applicable in the case in hand;

v) The Petitioner is not involved in any other criminal case;

vi) The Petitioner is permanent resident of District Fazilka and staying with his family members;

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.

(JAGMOHAN BANSAL)
JUDGE

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