

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

212

CRM-M-60746-2022

Date of Decision: 09.01.2023

Anil

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr.Vikas Bishnoi, Advocate
for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No. 223 dated 24.04.2021 under Sections 363, 366A, 344, 376 (2) (n) IPC (Section 6 of POCSO Act, 2012 has been added and Section 346 IPC has been deleted later on) registered at Police Station HTM Hisar, District Hisar.

2. Learned counsel for the petitioner *inter alia* contends that the victim had died due to multiple ailments which fact is not disputed by anyone. The victim had run away with the petitioner at her own free will and at the time of death, she was staying with the petitioner. The petitioner provided all the medical facilities to the victim which is evident from the fact that when complainant came to house of the petitioner, the victim was on oxygen. The family of the petitioner had informed the mother of the victim about the medical condition of the victim. The petitioner is not involved in any other offence. The petitioner is permanent resident of

District Hisar 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 it is undisputed fact that the victim was suffering from multiple ailments and she had died because of organs failure. She further submits that *challan* has already been presented and charges stand framed but no prosecution witness 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.

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 17.10.2021;
- ii) Police report under section 173 of Cr.P.C. stands filed, charges stand framed;
- iii) There are 21 prosecution witnesses but till date, no witness has been examined, thus, there is abysmally low possibility of conclusion of trial in near future;
- iv) It is family of the petitioner who informed the complainant about the medical condition of the victim ;
- v) The victim was on oxygen at the time of visit of her mother;
- vi) The victim had died on account of multiple organs failure and there is no direct evidence of rape committed by the

petitioner;

- vii) The victim was alive at the time when the complainant met her, however, there is no statement of victim disclosing the commission of alleged offence by the petitioner;
- viii) Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act, Companies Act are not applicable in the case in hand;
- ix) The Petitioner is not involved in any other criminal case;
- x) The Petitioner is permanent resident of District Hisar and staying with family members;
- xi) 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
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>