

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

226

CRA-S-39-2023 (O&M)
Date of Decision : 12.01.2023

Ankit and another

..... Appellants

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Parminder Singh, Advocate
for the appellants.

Ms. Priyanka Sadar, AAG, Haryana

JAGMOHAN BANSAL, J. (Oral)

1. The appellant through instant appeal is seeking setting aside of impugned order dated 29.11.2022 whereby Additional Sessions Judge/Fast Track Court (POCSO), Karnal, has dismissed the bail application of the appellant in a case arising out of FIR No. 110 dated 10.02.2022 under Section 4 of POCSO Act, Section 365 of IPC and Section 3(2)(va) of SC&ST Act, registered at Police Station Indri, District Karnal.

2. Learned counsel for the appellant *inter alia*, contends that the appellant was not named by prosecutrix in her statement recorded under Section 164 of Cr.P.C. The father of the appellant has compromised the matter. The age of the prosecutrix is disputed because in few documents, it is declared more than 17 years and in few documents, it is declared 18 years. In the medical examination, no physical or sexual assault was found. The challan has already been presented and charges stand framed. The appellant

is not involved in any other FIR. The appellant has deep roots in the society.

There is no possibility of flee from justice.

3. Learned State Counsel submits that police report has already been filed and charges stand framed. There are total 19 witnesses and till date, even prosecutirx is not examined. The appellant is involved in the commission of grave offence, thus, no leniency is warranted and release of appellant would hamper the trial.

4. 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.”

5. 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.

6. 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.

7. Keeping in mind:

- i) The appellant is in custody since 04.03.2022;
- ii) Police report under section 173 of Cr.P.C. stands filed and charges stand framed;
- iii) There are total 19 witnesses and till date even prosecutrix is not examined, thus, there is abysmally low possibility of conclusion of trial in near future;
- iv) The complainant-father of the prosecutrix has compromised the matter with the appellant and the other accused and age of the prosecutrix is doubtful as in few documents, it is 17 years and in few documents, it is 18 years
- v) The prosecutrix has not disclosed the name of the appellant in her statement recorded under Section 164 Cr.P.C.;
- vi) The medical report is not supporting the case of prosecution;

- vii) 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;
- 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 appellant is not involved in any other criminal case;
- x) The appellant is permanent resident of District Karnal and having family members;
- xi) Prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of appellant being flee from justice or tempering the evidences or winning over/threatening the witnesses;

this Court is of the considered opinion that present appeal deserves to allowed and accordingly allowed. The order dated 29.11.2022 passed by Additional Sessions Judge/Fast Track Court (POCSO), Karnal, is set aside and appellant is granted concession of regular bail in FIR No. 110 dated 10.02.2022 under Section 4 of POCSO Act, Section 365 of IPC and Section 3(2)(va) of SC&ST Act, registered at Police Station Indri, District Karnal. The appellant is ordered to be released on bail subject to conditions as may be imposed by trial Court/Illaq/Duty Magistrate concerned.

12.01.2023

anju

(JAGMOHAN BANSAL)
JUDGE

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