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

CRM-M-2631-2024

Date of decision: 06.08.2024

Komalpreet Singh @ Komal

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. G.S. Bajwa, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. Vikas Gupta, Advocate for the complainant.

HARPREET SINGH BRAR, J. (ORAL)

This second petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.16 dated 25.02.2020 under Sections 376/376-D(A)/323/120-B/366/366-A of IPC and Section 6 of POCSO Act, 2012 registered at Police Station Verowal, District Tarn Taran. Earlier application for regular bail was dismissed for want of prosecution on 27.09.2022.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 12.02.2020 at about 08:30 A.M. she was going to school and she noticed that a white colour car, in which her relative grand mother, namely, Lillawanti and her sons Gurpreet Singh and Harpreet Singh were sitting, was standing near her house. Gurpreet Singh and Harpreet Singh asked her to sit in the car and offered a drop to her school. She sat in the car and her grand mother offered her cold drink and after consuming the same, she felt dizzy. However, she found that these persons had not dropped her at her school and when they reached in the area of Bus Stand, Lovepreet Singh came there and he started driving the car and rest of the occupants alighted from the car.



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Thereafter, she became unconscious and when she regained her consciousness, she found herself locked in a room in a naked condition and was feeling pain in her private organs and found Lovepreet Singh, Komalpreet Singh (the petitioner herein) and Jobanjit Singh in the room, thereafter, all of them dropped her at her village and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. The provisions of POCSO Act have been wrongly invoked without proving the age of the prosecutrix in accordance with law. The reason best known to the prosecution, the primary entry has not been produced only the school admission register is brought on record to prove the age of the prosecutrix. The petitioner is behind the bars since 21.02.2021 and till date, after passing of more than three years, the trial has not been concluded. The delay in trial cannot be attributable to the petitioner as he is behind the bars. The delay in conclusion of the trial infringes the right of the petitioner provided under Article 21 of the Constitution of India. He further submits that the petitioner is having clean antecedents.

The learned State counsel has filed custody certificate in the Court today which is taken on record and assisted by learned counsel for the complainant per contra, opposes the grant of regular bail to the petitioner on the ground of gravity of offence and further submits that the petitioner has sexually exploited the minor girl of 15 years of age.

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:



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“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.”

The foundational concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last Court.

It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play.

In this regard, reference is being made to the law laid down by the

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Hon'ble Supreme Court in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- **Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao vs. State of Karnataka, (2002) 4 SCC 578, Babu Singh and others vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh vs. State of U.P. (2JJ.) and Fazal vs. State of Uttar Pradesh, (2012) 5 SCC 752.**

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 02.03.2021. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not reached halfway mark as only 08 out of 28 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner

Ergo, I am inclined to allow the prayer of the petitioner. Accordingly, the present petition is allowed. The petitioner-Komalpreet Singh alias Komal is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Illaqa Magistrate/Trial Court/Duty Magistrate.

The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and

without commenting on the merits of the case lest it may prejudice the outcome of the case pending before the trial Court.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

06.08.2024
Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No