

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

Date of decision: 12.08.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Angad Parmar, Advocate for
Mr. Vivek K. Thakur, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.507 under Section 346 of IPC and Sections 323/342/346/376/506 of IPC (added later on) registered at Police Station Civil Line Sonipat, District Sonipat (Annexure P-1).

The FIR (*supra*) was lodged on the statement of the complainant by alleging that his wife, namely, Shabnam, aged 25 years, was missing from 18.10.2022. She had gone to market and did not return. It is further alleged that the complainant tried to search her everywhere but could not trace her and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the prosecutrix is a mature lady and she was having consensual relationship with the petitioner and prior to that, she has performed three marriages. It is further contended that nothing tangible has been found during the medical examination of the prosecutrix to prove the complicity of the petitioner. Even the FSL



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report does not indicate any poison or drug and as such, her allegation that she was sexually exploited after giving some intoxicating substance, is found to be false.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that there are specific allegations against the petitioner with regard to sexual exploitation and thus, the petitioner is not entitled to the concession of regular bail.

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.”

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 11.12.2022 as per custody certificate. 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 made much progress as only 09 out of 13 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. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Amit is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/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

12.08.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No