



202

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-15845-2024 (O&M)  
Date of decision: 27.05.2024

Salamat Masih

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gursimran Singh Bawa, Advocate  
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

\*\*\*\*\*

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in case bearing FIR No.55 dated 06.04.2023 under Sections 363 & 366 of the Indian Penal Code, 1860 (Sections 376, 354-A, 506 of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 were added later on), registered at Police Station Majitha, District Amritsar Rural.

2. The present FIR was registered on the basis of statement of Sukhdev Masih on the allegations that he is doing the labour work and his first wife had passed away and he performed second marriage with his sister-



in-law, namely Jeevan Jyoti. He has three children i.e. two daughters, born out of first wedlock and one son, born out of second wedlock. His younger daughter 'R' (name withheld) is studying in Class 10<sup>th</sup> and her examination were going on. On 05.04.2023, at about 08.00 a.m., she went to appear in the examination, but did not return. After searching a lot in the neighbourhood and from the relatives, his daughter 'R' could not be found. He came to know that petitioner Salamat Masih had enticed away his daughter 'R'.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the FIR (*supra*) and he is behind bars since 06.04.2023. It is further contended that the material witnesses have already been examined and the prosecutrix has not supported the case of the prosecution and she has been declared hostile by learned Public Prosecutor and there is no other material on record to indicate complicity of the petitioner. Even DNA and FSL report are negative and as such, there is no evidence against the petitioner to justify his further incarceration.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that even if the prosecutrix has not supported the case of the prosecution, she was minor at the time of incident. As such, the petitioner is not entitled to be released on regular bail.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind bars since 06.04.2023 and the trial is progressing at snail's pace and out of 18 prosecution witnesses, only 06 PWs have been



examined so far. The culpability, if any, would be determined at the time of trial. 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.

6. A two Judge Bench of the Hon'ble Supreme Court in ***Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed as under: -

*“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.”*

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



8. 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.

27.05.2024  
*vishnu*

[ HARPREET SINGH BRAR ]  
JUDGE

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