

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

CRM-M-15984-2024 (O&M)

Date of decision: 08.04.2024

AJAY @ AKASHDEEP SINGH @ LADDI

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Harpreet Maini, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

HARPREET SINGH BRAR J. (ORAL)

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 250 dated 07.11.2023 registered under Section 363, 366-A of Indian Penal Code (Section 376 of IPC and Section 6 of POCSO Act added later on), at Police Station City Moga, District Moga.

2. The brief facts of the prosecution case are that the FIR(supra) was lodged on the statement of complainant Jagtar Singh on the allegations that he is having three daughters and one son. His youngest daughter (victim) is aged about 14 years, who is studying in 7th Class at Bhim Nagar Camp School, Moga who used to go to school from 12.00 PM to 05.00 PM. On 07.11.2023, in routine, her daughter (victim) had gone to school but thereafter in the evening time, her wife had informed him through telephone that their daughter had not returned at home and after that he also returned to home. They tried to search their daughter and then they came to know that Hardeep Singh @ Bahla Singh son of Jaswant Singh resident of Kular Nagar has enticed away her minor daughter on the pretext of marriage. On these set of allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is not named in the FIR. The allegations were levelled against the co-accused Hardeep Singh @ Bahla regarding enticing away the daughter of the complainant. The petitioner has been involved in the present FIR with the aid of Section 120-B of Indian Penal Code and admittedly the allegations under Section 376 of IPC and Section 6 of POCSO Act are levelled against the co-accused Hardeep Singh. The petitioner and his wife, both have been falsely implicated in the present case, for the reason that the petitioner is cousin brother of the main accused Hardeep Singh. The petitioner is behind the bars since 18.12.2023 and the Investigating Agency has already concluded the investigation and filed the final report under Section 173 of Cr.P.C.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that daughter of the complainant-prosecutrix has made a statement under Section 164 of Cr.P.C. in which, she has alleged that the petitioner and his wife forcefully made her sit on the motorcycle and the main accused is yet to be arrested.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner has been in custody since 18.12.2023 and not even a single prosecution witness has been examined so far. Culpability, if any, would be determined at the time of the trial.

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. Keeping in view the facts and circumstances of the case and the role attributed to the petitioner, the present petition is allowed and the petitioner-Ajay @ Akashdeep Singh @ Laddi is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

7. 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.

April 08, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No