

CRM-M-16449-2024
Date of decision: 09.04.2024

Amritpal SinghPetitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. H.S. Batth, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

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.101 dated 08.09.2022 under Sections 363/366/376/120-B of IPC and Section 4 of POCSO Act registered at Police Station Bhikhiwind, District Tarn Taran.

The FIR (*supra*) was registered on the allegations that on 06.09.2022 at about 06:00 A.M., the complainant saw that her daughter/prosecutrix was not present in her cot and on search, she was not able to trace her. Thereafter, she talked about the same with her brother-in-law (*jija*). On search, they came to know that Amritpal Singh (the petitioner herein) with the help of Preet, enticed the prosecutrix (daughter of the complainant) on the pretext of marrying her and thus, the present FIR was lodged.

Learned counsel for the petitioner *inter alia* contends that during the course of trial, the complainant as well as the victim/prosecutrix has not

supported the case of prosecution and both have been declared hostile by the learned Public Prosecutor. It is further contended that the prosecution has not proved the age of victim/prosecutrix in accordance with law, as such, no presumption under the POCSO Act can be fastened upon the petitioner. Once the material witnesses have not supported the case of prosecution, the petitioner is entitled to the relief of regular bail.

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that he is the main accused and there are specific allegations against him. However, he could not controvert the fact that the complainant as well as the victim/prosecutrix have not supported the case of prosecution. He further submits that the petitioner is involved in one more case and does not entitle to the relief.

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 15.09.2022 and he has undergone the actual period of 01 year 06 months and 26 days. 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 02 out of 18 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.

Keeping in view the law laid down by the Hon'ble Supreme Court of India in '**Prabhakar Tewari Vs. State of U.P. and another**' 2020 (1) R.C.R. (Criminal 831) and '**Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another**', 2012 (2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

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-Amritpal Singh 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.

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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

09.04.2024
Neha

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