



Date of decision: 24.07.2024

...PETITIONER

STATE OF PUNJAB

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Dhanvinder Singh Nigha, 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. 72 dated 02.05.2022 registered under Sections 363, 376-AB, 511 of Indian Penal Code and Sections 3 and 4 of Protection of Children from Sexual Offences Act (Section 60 of POCSO Act added later on) at Police Station City Phagwara, District Kapurthala.

2. Present FIR was registered on the statement of complainant Annu on the allegations that she is working as domestic sweeper, and having three sons and a daughter and her elder son Kaka is married and he is father of three daughters. His eldest daughter Ritika is aged about five years, younger to her Tanu who is aged about three and half years old, and youngest daughter aging about one month. The complainant on 01.05.2022 at about 8.00 P.M. along with her eldest daughter and Tanu (grand-daughter) had gone for taking grocery items from the Grocery shop of Bhushan of her village and when they were 200 meter short of the said shop then one unknown boy had taken her grand-daughter and had fled away from there and due to darkness, she had failed to identify but the cries of her grand-daughter initially were audible but later on had gone away. The complainant raised hue and cry and the mohalla persons started gathering there.



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The complainant along with maternal uncle Tamaru and paternal uncle Parvesh of victim started searching the victim and after about two hours when they reached near the Balmiki Chowk, then they saw that one unknown boy had removed frock of her grand daughter and was doing obscene acts with her and after seeing them approaching him, the said unknown boy threw away her grand-daughter and fled away from the spot. Then the complainant and others came to know about the name of said unknown person as Sonu (petitioner herein). The torn frock of her grand daughter was lying there and the same was smeared with dirt and victim was wearing the pajami (lower) and was seemed to be subjected to rape and as the condition of victim was serious and she was shifted to Civil Hospital, where, the doctor subjected the victim to medico legal examination and discharged her from the hospital. Then the complainant went to Police station alongwith her daughter-in-law named Jyoti and reported the matter to the police. On the basis of aforesaid allegations, FIR(supra) was lodged.

3. Learned counsel for the petitioner *inter alia* contends that petitioner has been falsely implicated in the present case and there is no direct or indirect evidence to connect the petitioner with the alleged crime and the petitioner is behind the bars since 02.05.2022. The trial of the case is progressing at snail's pace. Learned counsel further contends that even in the medical examination of the victim-prosecutrix, nothing suggestive of sexual assault has been found. It is further contended that the complainant and mother of the victim have been examined and both of them have not supported the case of the prosecution.



4. Per contra, the learned State counsel opposes the prayer made by learned counsel for the petitioner on the ground that petitioner is accused of a heinous crime and the victim-prosecutrix in the present case, at the time of alleged occurrence, was less than 04 years of age and as such, the petitioner is not entitled to the concession of regular bail. However, he could not controvert the fact that the petitioner is not involved in any other case.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 02 years 02 months and 17 days as on 22.07.2024. He is not involved in any other case. Trial of the case is likely to take long time to conclude. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

6. 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.

7. 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.

8. In this regard, reference is being made to the law laid down by the 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 (CrI) 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 (CrI) No.2356 of 2010, Kushal Singh Vs. State of U.P. (2JJ.) and Fazal Vs. State of Uttar Pradesh, (2012) 5 SCC 752.***

9. 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."

10. Having considered the entire facts and circumstances of the case, specifically the fact that the petitioner has been in custody for 02 years 02 months and 17 days as on 22.07.2024, further incarceration of the petitioner

without the trial being concluded in near future, may not be justified. Ergo, I am inclined to allow the prayer of the petitioner. Accordingly, the present petition is allowed and the petitioner-Sonu is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

11. 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.

12. 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.

July 24, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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