



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

CRM-M-16890-2024 (O&M)

Date of decision: 12.09.2024

SACHIN

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. K.S. Hissowal, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

HARPREET SINGH BRAR J. (ORAL)

1. This is the second petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in case bearing FIR No. 274 dated 19.10.2022 registered under Sections 376(2)(J), 376(2)(L) of Indian Penal Code at Police Station Ambala Sadar Ambala.

2. The FIR(supra) was registered on the statement of complainant- R.K. on the allegations that her daughter RPK is mentally retarded child and an unknown suspicious *pheriwala* (street vendor) has committed rape upon her at about 10.30 AM on 18.10.2022. At that time of incident he and his wife were not at home and his elder daughter Manpreet Kaur and younger daughter RPK were at home. When his elder daughter saw that her clothes were stained with blood and on inquiring she told her sister whatever was happened to her and prior to this when her elder daughter was searching her in the house, then she saw suspicious man coming out of the place, where he committed rape. Then, he fled away from there after the incident. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that this is the second petition seeking regular bail for the petitioner and the first petition



was dismissed as withdrawn on 09.10.2023 and petitioner is not named in the FIR and he was arrested after three months of the alleged incident only on the basis of suspicion. The identity of the petitioner has not been established. Even the Test Identification Parade was not conducted and petitioner was seen in CCTV footage, however, primary source of CCTV footage has not been proved and petitioner is behind the bars since 14.01.2023 and material witnesses have already been examined.

4. Per contra, learned State counsel files the custody certificate and the same is taken on record. He opposes the prayer made by learned counsel for the petitioner on the ground that looking at the gravity and nature of the offences allegedly committed by the petitioner, he is not entitled for any relief by this Court as the petitioner is alleged to have raped a mentally disabled girl.

5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner is behind the bars since 14.01.2023 i.e. for 01 year and 07 months and 27 days as on 10.09.2024 and he is not involved in any other case and trial of the case is likely to take long time to conclude as out of total 20 prosecution witnesses, only 14 have been examined till date. Culpability, if any, would be determined at the time of the trial.

6. 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 demo cracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

7. In view of the above, the present petition is allowed and the petitioner-Sachin is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate 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.

September 12, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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