

CRA-S-1555-2024 (O&M)

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**207 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRA-S-1555-2024 (O&M)
Date of Decision: 02.12.2024**

MANOJ KUMAR

...Appellant

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

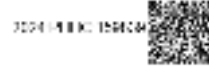
Present: Mr. Sunil Kumar Nehra, Advocate
for the appellant.

Mr. Vikas Bhardwaj, AAG Haryana.

Harpreet Singh Brar J.(Oral)

1. The present appeal has been filed for setting aside the order dated 13.02.2024 passed by learned Additional Sessions Judge-cum-Special Judge, Fast Track Court, Hisar and further seeking grant of regular bail in case bearing FIR No. 607 dated 13.07.2022 under Sections 363/366-A/376(3) of Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act, 2012 and Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 registered at Police Station Azad Nagar, District Hisar, Haryana.

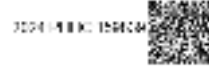
2. Complainant on 13.7.2022 lodged a complaint before the jurisdictional police authorities to the effect that when she came back home after her duty hours she found that her minor daughter/victim age 15/16 years was not there. Complainant tried her best to locate her but in vain. Complainant expressed a suspicion that some unknown person had enticed away her daughter. A prayer was made to locate the victim and to take action against accused. During the course of investigation on



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27.7.2022, I.O. recovered the victim and in the presence of Legal Aid Counsel recorded her statement. Victim in her statement disclosed that she belonged to Scheduled Caste and was studying in 11th standard. On 12.7.2022, she was operating her mobile phone till late night on which her mother reprimanded her. Victim told the incident to her friend Manoj (appellant herein), who was known to her for the last one year. Appellant asked the victim to come to him. On 13.7.2022, victim without informing her parents, had gone with the appellant. They both kept roaming during the entire night in a rickshaw and on the next day i.e. 14.7.2022 they both stayed in a room. Victim alleged that at that time, appellant disclosed that he was already married having one child whereas appellant made forcible physical relations with the victim. Appellant on the next day got introduced victim to his wife. Victim told the appellant that he had told her that he was unmarried. When appellant said that it did not matter and appellant started establishing forcible relations with the victim who refused to do so. But appellant then uttered castiest remarks to the victim. Thereafter, Sandeep, cousin of the appellant, had come and asked the appellant from where he had brought the victim girl. Victim told entire incidents to Sandeep. Then Sandeep and his wife had brought victim to their home where victim stayed. They inquired about the address of the victim. Then victim alongwith Sandeep had gone to Police Station Mill Gate Hisar for giving a complaint against appellant Manoj and at that time victim came to know that her parents had already lodged a complaint of missing of victim with the police. In this way victim, prayed to the police to take action against accused. Investigating officer on 23.7.2022 got recorded statement u/s 164



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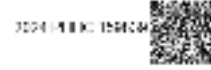
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Cr.P.C. of the victim before Magistrate. Victim was got medico-legally examined on 28.7.2022 from Civil Hospital, Hisar. Her vaginal swabs were taken as samples for forensic analysis.

3. Learned counsel for the appellant *inter alia* contends that appellant has been falsely implicated in the present case and there is a contradiction between the statement of the victim made before the Legal Aid Counsel and her statement recorded under Section 164 Cr.P.C before the jurisdictional Magistrate. The appellant is behind the bars for more than 02 years and 04 months and the delay in concluding the trial cannot be attributed to the appellant as he is in judicial custody. The prosecution has only examined one prosecution witness in spite of passing of more than 02 years and 04 months from the date of registration of FIR(supra).

4. Learned State counsel filed the custody certificate, which is taken on record and *per contra* opposes the prayer made by learned counsel for the appellant on the ground that there are specific and serious allegations levelled against the appellant and appellant has called the prosecutrix on mobile and enticed her away. However, he could not controvert the fact that appellant is behind the bars since 02 years 04 months and 03 days and he is not involved in any other case.

5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that appellant is behind the bars since 29.07.2022 i.e. for 02 years 04 months and 03 days and out of total 16 prosecution witnesses, only 01 has been examined. Culpability, if



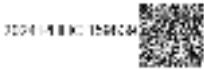
any, would be determined at the time of the trial. The appellant is not involved in any other case.

So further incarceration of the appellant 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.

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. In view of the above, the present petition is allowed and the appellant-Manoj Kumar 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.

(HARPREET SINGH BRAR)
JUDGE

02.12.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No