

CRM-M-20052-2024
Date of decision: 29.04.2024

....Petitioner

...Respondent

Present: Mr. Ajay Kaushik, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The FIR (*supra*) was lodged on the allegations made by the complainant that she is a widow and has one daughter. About five years ago, she met Sunil Kumar Belt No.2555 Hawaldar, who is a traffic police employee. He disclosed to her his celibate and unmarried status. It is further alleged that she fell in love with him and he expressed a desire to cohabit with her and care for her child. Following a ring ceremony at a church, they commenced cohabitation in a rented accommodation. During this period, he engaged in physical intimacy with her, resulting in her pregnancy. Subsequently, the accused/petitioner purportedly advised her to terminate the pregnancy, and upon

her refusal, administered some medication to induce abortion. Despite this, he continued to engage in physical relations with her, leading to another pregnancy, which has progressed to five months and now, he is again asking her to terminate her pregnancy otherwise he will not live with her. When the complainant refused, he blocked her contact and told her that he does not want any relationship with her. Further alleged that he has abandoned her and wanted to kill her child and threatening her and, thus, the present FIR was registered.

Learned counsel for the petitioner *inter alia* contends that the complainant is major and she was in a consensual relationship with the petitioner. Both of them carried away with this consensual relationship for long time and there is no medical record to substantiate the allegation contained in the FIR (*supra*). The complainant/prosecutrix has refused to undergo medical examination and only bald allegations are there. The act and conduct of the complainant/prosecutrix clearly indicates that the factual ingredients to breach the threshold of Section 376 of IPC are clearly missing. It is further contended that the earlier to lodging of the FIR (*supra*), the complainant/prosecutrix has filed a similar complaint against one, Kanwaljit Singh which she has later on withdrawn. He further submits that the petitioner is not involved in any other case.

Per contra, the learned State counsel opposes the prayer made by the petitioner on the ground that there are specific allegations against the petitioner and he is involved in a heinous crime.

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 16.11.2023 and there is no other case against the petitioner. 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 none out of 13 prosecution witnesses has 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.

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-Sunil Kumar 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.

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

29.04.2024
Neha

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