



216 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21175-2024 (O&M)

Date of decision: 22.07.2024

ROHIT ALIAS GYANI

...PETITIONER

V/S

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rohit Singla, Advocate for
Mr. Abhay Gupta, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. AG Haryana.

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. 30 dated 12.02.2022 registered under Sections 363, 366, 366-A and 506 of Indian Penal Code, 1860 and Section 6 of Protection of Children from Sexual Offences Act 2012 at Police Station Kalka, District Panchkula.

2. Brief facts of the case are that the present FIR was registered on the complaint moved by complainant R.... (name withheld) stating therein that she is living near Kali Mata Mandir. On 11.02.2022, she and her husband had gone to their duties but in the evening at about 06.00 PM, when they came to home, they saw that their daughter P...(name withheld) was found missing and they tried their level best to search her but they could not know about her whereabouts. A request was made to take action against the culprit. 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 he is in custody since 01.03.2022 and there is nothing on record to prove that petitioner had



enticed away the prosecutrix. Petitioner is having clean antecedents. In spite of long incarceration, the material witnesses are not coming forward for getting their statements recorded, even after they have been summoned through bailable warrants vide order dated 01.12.2023 by the learned trial Court, which is available on record as Annexure P-5 and the delay in the trial is attributable to the prosecution.

4. Per contra, learned State counsel opposes the prayer made by learned counsel for the petitioner on the ground that petitioner is the main accused and there are serious and specific allegations levelled against him. As such he is not entitled to grant of regular bail and moreover, the petitioner is also involved in one more FIR. Learned State counsel has placed on record the custody certificate and the same is taken on record.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 01.03.2022. Trial of the case has not even reached halfway mark as only 04 out of 15 prosecution witnesses have been examined so far. Further, the perusal of the zimni order (Annexure P-5) clearly indicates that material witnesses are not coming forward for deposing before the learned trial Court, in spite of issuance of bailable warrants. 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 (Crl) 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 (Crl) No.2356 of 2010, Kushal Singh Vs. State of U.P. (2JJ.) and Fazal Vs. State of Uttar Pradesh, (2012) 5 SCC 752.***

9. In view of the ratio of law laid down by Hon'ble Supreme Court in ***Prabhakar Tiwari Vs. State of UP and Anr.*** 2020(1) RCR (Criminal) 831 and ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others*** 2012(2) SCC 382, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

10. 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.”

11. Accordingly, the present petition is allowed. The petitioner-Rohit @ Gyani is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

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 22, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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