

202

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21494-2024 (O&M)

Date of decision: 06.05.2024

DAVINDER SINGH

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amardeep Singh Mann, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. AG 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. 127 dated 27.09.2023 registered under Sections 376, 120-B and 506 of Indian Penal Code at Police Station Bareta, District Mansa.
2. The FIR(supra) was registered on the allegations that complainant was providing coaching of IELTS to students at Apple Coaching Centre, Bereta. During this period, Davinder Singh (petitioner) used to come to learn computer at this IELTS centre and during this time, the petitioner expressed his liking towards the complainant and proposed that he wants to marry her. The petitioner took her into faith and also introduced the complainant to his sister namely Veepal Kaur. Davinder Singh assured the complainant that both of them will get married and settle abroad. One day, he took her to a Hotel in Budhlada on the pretext of introducing her to his family members but when they reached there, none of his family members were present there and then he committed rape upon the complainant. The complainant became pregnant and she informed Davinder Singh regarding her pregnancy, upon which, he started ignoring her and asked her to abort the baby and also provided medicine for

abortion. The complainant did not take the medicine and Davinder Singh started threatening her that he would kill her and her baby. The petitioner refused to marry the complainant and raped her on the false pretext of marriage. When *Panchayat* was convened, the parents and sister of Davinder Singh assured the complainant that they will marry her with the petitioner. On 26.09.2023, Davinder Singh called the complainant and started abusing her and the complainant was exploited on the false pretext of marriage.

3. Learned counsel for the petitioner *inter alia* contends that complainant is major and 29 years of age and she is conscious about her well-being, whereas the petitioner is 25 years of age and the petitioner and prosecutrix were in consensual relation with each other and prosecutrix was well aware of the consequences of her choice. It is further contended that no specific date or detail qua the incident as alleged in the FIR(supra) are given and the prosecutrix admits her intimacy with the petitioner and she has not mentioned any date or time of taking her to the Hotel, where the petitioner has allegedly committed rape upon her. It is further submitted that Investigating Agency has concluded the investigation and presented the final report under Section 173 Cr.P.C. before the trial Court. Even the prosecutrix has already been examined and her deposition before the trial Court is available on record as Annexure P-2.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that he is the main accused and there are serious allegations levelled against him. However, he could not controvert the fact that the petitioner is not involved in any other case and prosecutrix has already been examined by the trial Court.

5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner is behind the bars for more than 07 months and 03 days and out of total 14 prosecution witnesses, only 02 have been examined so far. As such, the 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. 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."

7. Accordingly, the present petition is allowed. The petitioner-Davinder Singh 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.

May 06, 2024

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

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