



204 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21808-2024 (O&M)
Date of decision: 24.05.2024

ROHIT

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sukesh Kumar Jindal, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG 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 the case bearing FIR No. 419 dated 18.07.2022 registered under Sections 363, 366-A, 376(3) and 506 of Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act, 2012 at Police Station Tehsil Camp Panipat. First petition seeking grant of regular bail to the petitioner was dismissed on 07.07.2023.

2. Learned counsel for the petitioner submits that present petition has been filed under the changed circumstances as the material witnesses including the complainant and prosecutrix have been examined by the trial Court.

3. Briefly, it is the case of the prosecution that on 18.07.2022, complainant/father of the victim girl came present in Police Station and presented a complaint to the effect that on 17.07.2022, in the evening, he got a call from his wife that their younger daughter/victim had gone at around 4:00 p.m. but did not return. Her daughter/victim has taken her mobile phone with her and she has been repeatedly calling her but her daughter is not picking up



the phone. She also searched around the house but could not find her. Then again at about 8:00 p.m., he got call from his house that his daughter/victim has been crying profusely. She told that a boy namely Piyush called her on the ground that he has brought a Car today. She came near Bhulbhulaiya Chowk. The said boy was also wandering around the street for many days. On this, she went to Bhulbhulaiya Chowk, Wadhawa Ram Colony and on his saying she sat in his Car. After sitting, she saw that Piyush and his two friends were sitting in that Car. Then all of them brought her in a house in deserted area near Gharaunda. All of them called one person to the house. Then that person committed wrong act with her without her consent. Piyush and his friends stood outside the room. Thereafter, Piyush left from the spot. The person, who committed wrong act with her and both friends of Piyush, who took her away, dropped her near Bhulbhulaiya Chowk, Wadhawa Ram Colony at around 7:00 p.m.. They had threatened to kill her. On aforesaid allegations, FIR(supra) was registered.

4. Learned counsel for the petitioner *inter alia* contends that petitioner was not named in the FIR(supra) initially. Even in the statement of prosecutrix recorded under Section 164 of Cr.P.C., the petitioner was not named, rather one Piyush was named as accused. Even at the time of medical examination of the prosecutrix, the history of the incident was given by the victim, in which she has categorically stated that Piyush has abducted her and unknown persons committed sexual assault upon the victim and thereafter, she made a supplementary statement and took a complete U-turn from her earlier version and named the petitioner as the accused. Thereupon, her second statement under Section 164 of Cr.P.C. was recorded and the bail application



of the petitioner was declined only on the ground that material witnesses were yet to be examined and the petitioner may influence the witnesses. There are total 23 witnesses cited by prosecution, out of which, only 7 have been examined so far.

5. Per contra, learned State counsel on instructions from ASI Sunita opposes the prayer for grant of regular bail to the petitioner on the ground that petitioner is accused of a heinous crime and the Investigating Agency has collected sufficient evidence to prove the complicity of the petitioner in the alleged occurrence. However, he could not controvert the fact that petitioner is not involved in any other case. He produces the custody certificate, which is taken on record. Perusal of the said custody certificate indicates that petitioner has undergone incarceration for a period of 1 year 10 months and 02 days as on 23.05.2024.

6. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is in custody since 22.07.2022 and trial of the case is likely to take long time to conclude as there are total 23 prosecution witnesses, out of which only 07 have been examined so far. 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.

7. 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.”

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

9. 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 24, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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