



202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22771-2024
Date of decision: 10.05.2024

KhurshidPetitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikrant Koundal, Advocate for
Mr. Mazlish Khan, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail to the petitioner in case bearing FIR No.456 dated 06.11.2023 under Sections 376/506 of IPC registered at Police Station Sadar Tauru, District Nuh (Haryana).

The FIR (*supra*) was lodged based on allegations that on 09.10.2023 at around 05:00-06:00 P.M., when the victim along with her two minor daughters were present at her house then accused-Khurshid (the petitioner herein) came to her house and took her and her daughters under the pretext of assisting her in opening a bank account. Subsequently, the accused allegedly administered a stupefying substance to the victim, rendering her unconscious. Thereafter, he took her to an unknown place and committed rape upon her and extended threat to kill her and, thus, the FIR (*supra*) was registered.



CRM-M-22771-2024

-2-

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. There is a delay of 26 days in registration of the FIR (*supra*). In fact, the petitioner and the complainant were in a consensual relationship. The complainant is major having two children and both of them have also filed a protection petition before this Court vide CRWP No.10654 of 2023 titled as 'Tahira and another Vs. State of Haryana and others'. He further relies upon the copy of the petition (Annexure P-1) to indicate that in para 2 of the petition, the complainant has categorically stated that she is 35 years of age and her date of birth is 01.01.1988 as per the Aadhar Card annexed with the said petition as Annexure P-1. Learned counsel for the petitioner submits that the case set up by the complainant in the FIR (*supra*) is highly unbelievable and the petitioner is in custody since 08.11.2023 and the claim of the complainant that she is only 18 years of age is against the facts available on record. He further relies upon the booking receipt of the Lycoris Blue Berry Hotels, Zirakpur (Annexure P-3) to submit that the complainant along with her two children had stayed with the petitioner on 10.03.2023 and she has further stayed with the petitioner for 15 days at different places.

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that there are serious allegations against the petitioner and age of the prosecutrix is more than 18 years and he is involved in two more FIRs. He further submits that the petitioner is a habitual offender and, as such, does not deserve the concession of regular bail.

In rebuttal, learned counsel for the petitioner submits that he has



CRM-M-22771-2024

-3-

given details of all those FIRs in para 13 of the petition, in which the petitioner has been acquitted.

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 08.11.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 25.01.2024 and trial of the case has not made much progress. 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-Khurshid 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

10.05.2024
Neha

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