



204

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-24717-2024 (O&M)
Date of decision: 21.05.2024

Ashish

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gautam Diwan, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in case bearing FIR No.509 dated 05.09.2023 under Sections 376 & 506 of the Indian Penal Code, 1860 and Section 66C of the Information and Technology Act, 2000 (added later on vide supplementary challan dated 22.01.2024), registered at Police Station Palam Vihar, District Gurugram.

2. The present FIR was registered on the allegations that the prosecutrix lived alone along with her minor daughter for 08 months in a rented accommodation and her husband was in jail in some land matter and the petitioner was living in the nearby. For the last two months, she taken



another room on rent, whereby the petitioner used to visit the room of the prosecutrix for having food and he used to give her Rs.200/-. Wherever the prosecutrix had to go, she used to go with him in his car and she used to pay the expenses for the same and they used to click photographs. On 28.08.2023, in an inebriated condition, the petitioner came to her room and he looked at her with bad intention. A scuffle took place between them. The police officials, who came on the call made on 112 by the prosecutrix, made the petitioner to understand and thereafter, he left. But on 29.08.2023 at about 06.00 a.m., the petitioner again went to room of the prosecutrix and asked her to be physical with him and she refused. On 30.03.2023 at about 12.00 p.m., the petitioner again came and asked her to have sex with him, upon which, the prosecutrix refused. The petitioner, in front of sister and daughter of the prosecutrix, did wrong with her by showing the pistol. When her daughter and sister started screaming, the petitioner threatened to do the same thing with them. The petitioner was also blackmailing her sister and from her instagram ID, he was sending messages to the prosecutrix and was also calling for the last five days. Therefore, a request was made to the SHO concerned for taking action against the petitioner.

3. Learned counsel for the petitioner, *inter alia*, contends that the prosecutrix is a married woman of 29 years of age and is having one daughter and she developed intimacy with the petitioner and their relationship is purely consensual in nature. Learned counsel for the petitioner relies upon the photographs attached with the present petition as Annexure



P-3 to substantiate his claim of having consensual relationship. It is further contended that there is no other scientific evidence to corroborate the case set up by the prosecutrix, as she refused to get herself medically examined. The investigating agency has concluded the investigation; the petitioner is behind bars since 09.09.2023 and he is not involved in any other case.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner is main accused and the investigating agency has collected sufficient material to prove his complicity in the alleged incident. However, she could not controvert the fact that the petitioner is not involved in any other case and he has undergone the custody of 08 months.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind bars since 09.09.2023; the investigating agency has already concluded the investigation and presented the final report under Section 173 Cr.P.C. and out of total 13 prosecution witnesses, two of the material witnesses including the prosecutrix have already been examined. The culpability, if any, would be determined at the time of trial. 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.

6. A two Judge Bench of the Hon'ble Supreme Court in ***Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51***, with respect to prevailing



conditions of undertrial prisoner in India has observed as under: -

“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. In view the above, present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner Ashish is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court 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.

[HARPREET SINGH BRAR]
JUDGE

21.05.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No