



204 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
 AT CHANDIGARH

CRM-M-26650-2024 (O&M)
Date of decision: 29.05.2024

RAHUL

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG 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. 1113 dated 12.12.2022 registered under Sections 346, 363, 366, 376(2) of Indian Penal Code (Section 346 of IPC deleted later on) and Section 6 of Protection of Children from Sexual Offences Act, 2012 at Police Station Civil Lines, Karnal.

2. Prosecution case is that on 12.12.2022, complainant 'C' (name withheld and to be referred to as 'C' or complainant/father of victim hereinafter) presented a complaint in the police station to the effect that on 10.12.2022 at about 10.00 a.m., his eldest daughter 'B', (name withheld and to be referred to as 'B' or victim hereinafter), 16, left the house without informing anyone. They kept searching her but failed to find her. A prayer was made for tracing out his daughter. On the basis of this complaint, an FIR under section 346 IPC was registered. Matter was investigated. During investigation, Section 346 IPC was given up and Section 365 IPC was added to the case. On 24.12.2022, victim was recovered from Ballabgarh. She was counselled. Her statement under section 164 Cr.P.C. was recorded, wherein she stated that she



Rahul. He had forced her to accompany him. He committed wrong act with her against her wishes.

3. Learned counsel for the petitioner *inter alia* contends that perusal of the record clearly indicates that petitioner has not enticed away the prosecutrix, rather she has clearly stated in her statement recorded under Section 164 Cr.P.C., that she is in love with the petitioner and she has eloped with him and there is no corroborative material available on record to support the case set up by the prosecution against the petitioner as admittedly, the prosecutrix has refused to get herself medico legally examined and in the absence of any medical evidence or FSL report, the petitioner is entitled to grant of regular bail. The petitioner is behind the bars since 25.12.2022 and material witnesses have already been examined. It is further contended that proximity between the age of the petitioner and prosecutrix, requires consideration by this Court. Lastly it was argued that prosecution has failed to prove the age of prosecutrix in accordance with law.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that prosecutrix in her statement recorded under Section 164 Cr.P.C. has made specific allegations against the petitioner and as such he is not entitled to be released on regular bail. Learned State counsel files the custody certificate. 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 for the last 01 year 05 months and 03 days as on 27.05.2024 and he is not involved in any other case. Material witnesses have already been examined. Trial of the case is likely to take long time to conclude as out of total 16 prosecution witnesses, only two

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.

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 demo cracy, 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-Rahul 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 29, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE