

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

CRM-M-24816-2024

Date of decision: 22.05.2024

Amit alias Rinku

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajesh Bansal, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.677 dated 28.06.2023 under Section 365 of IPC (Sections 376 (2)(n) of IPC and Section 6 of POCSO Act, 2012 added later on) registered at Police Station Panipat City, District Panipat (Annexure P-1).

The FIR (*supra*) was lodged on the statement of the complainant that on 28.06.2023, the complainant i.e. father of the victim, came present in Police Station and presented an application to the effect that yesterday at 01:00 P.M., his daughter/victim, aged 16 years 10 months, had gone anywhere without informing anyone and her mobile number was also switched off. On 07.08.2023, the victim was recovered when the investigation was set into motion and her statement under Section 164 Cr.P.C. was got recorded and she got medico legally examined. The accused/petitioner was arrested on 23.12.2023.



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Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. In fact, the petitioner and the prosecutrix/victim have eloped after falling in love with each other and performed marriage due to the opposition of their families. The statements of victim/prosecutrix was recorded under Section 164 Cr.P.C. (Annexure P-3) by the learned Additional Sessions Judge-cum-Fast Track Court (POCSO), Panipat, in which she has clearly stated that the petitioner has solemnized marriage with her and he has neither abducted her, kidnapped her nor committed any wrong act against her wish at any point of time. Moreover, both the petitioner and the prosecutrix have approached this Court by filing CRM-M-25430-2024 titled as 'Amit alias Rinku Vs. State of Haryana and others' seeking quashing of the FIR (*supra*) on the ground that both the petitioner and the victim/prosecutrix have performed marriage and the victim is the legally wedded wife of the petitioner and date of birth of the victim/prosecutrix is 20.09.2003, as such, she is major.

Mr. Arun Kumar Gupta, Advocate puts in appearance on behalf of the complainant and files his power of attorney which is taken on record and submits that he has no objection if the present petition is allowed.

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that he is the main accused and the veracity of the allegations can only be examined during the course of trial.

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.”

Moreover, a Full Bench of Delhi High Court in ‘Court on its Own Motion (Lajja Devi) Vs. State’ 2012 (4) CCR 72, has categorically held that in case the prosecutrix/victim is more than 16 years of age and makes a statement to the effect that she left of her own volition and records a statement indicating that the consent was without any force, coercion or undue influence, the Court will be within its power to accept the statement and quash proceedings under Sections 363 or 376 of IPC. It has been further held that the FIR can be quashed if after attaining the age of majority, she affirms and reiterates her consent.

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 23.12.2023. Investigation is complete. The final report under Section 173

Cr.P.C. was presented before the concerned Court 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-Amit @ Rinku 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

22.05.2024
Neha

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