

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

CRM-M-25486-2024
Date of decision: 17.07.2024

....Petitioner

Versus

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Sandeep Kumar, DAG, Punjab.

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.179 dated 06.08.2021 under Sections 363/366-A of IPC registered at Police Station City Jalalabad, District Fazilka.

The FIR (*supra*) was lodged on the allegations that on the intervening night of 1st - 2nd August, 2021, the accused/petitioner enticed away the minor daughter of the complainant on the pretext of marriage. When the complainant searched her daughter, he could not trace her and, thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the FIR (*supra*) was registered after a delay of four days from the alleged occurrence and the entire case set up by the prosecution is concocted. The prosecutrix has admitted of having an affair with the petitioner and both of them have desired to marry each other but the parents of the prosecutrix was opposing the same and due to their opposition, the FIR (*supra*) was registered. He further submits



CRM-M-25486-2024

-2-

that the petitioner was arrested on 09.08.2021 and thereafter, the petitioner has applied for regular bail before the learned Sessions Judge, Fazilka and the same was allowed on 10.05.2021. During the course of trial, the petitioner was arrested in another FIR and he could not appear before the learned trial Court and therefore, the learned Additional Sessions Judge, Fazilka has declared the petitioner as proclaimed offender vide order dated 01.07.2023 and the petitioner was thereafter arrested on 24.07.2023 and he has already undergone the custody of 01 year 01 month and 21 days as on 16.07.2024.

The learned State counsel has filed the custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that the petitioner is a habitual offender but he could not controvert the fact that the petitioner when declared as proclaimed offender, he was arrested in another FIR. He further submits that the petitioner is involved in two more cases.

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 in custody for the last 01 year 01 month and 21 days as per custody certificate. 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 as only 03 out of 20 prosecution witnesses have been examined so far. 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.

Keeping in view the law laid down by the Hon'ble Supreme Court of India in '**Prabhakar Tewari Vs. State of U.P. and another**' 2020 (1) R.C.R. (Criminal 831) and '**Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another**', 2012 (2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

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-Sona Singh is ordered to be released on regular bail

**CRM-M-25486-2024****-4-**

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

17.07.2024*Neha*

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