

**CRM-M-26293-2024**  
**Date of decision: 30.05.2024**

**...PETITIONER**

STATE OF HARYANA

## ...RESPONDENT

Present: Mr. Jitender K. Sehrawat, Advocate  
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

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**HARPREET SINGH BRAR J. (ORAL)**

1. This is first petition filed under Section 439 of Code of Criminal Procedure praying for grant of concession of regular bail pending trial in case FIR No.817 dated 22.09.2023 registered under Section 346 of Indian Penal Code (Sections 323, 376(2)(n), 344, 506 and 120-B IPC added later on) at Police Station Barwala, District Hisar, Haryana.

2. The present FIR was lodged on the complaint dated 21.09.2023 of complainant-father of victim "S" (real name withheld) alleging that he is a labourer. On 21.9.2023 at about 8.00 AM, his daughter/ victim 'K' (name not disclosed) left home for school. When she did not return home till evening after the holiday, they searched her in the neighbourhood and from her relatives but no clue was found. The complainant told about the description of his daughter and prayed for searching his daughter/victim. On the basis of above complaint, FIR under section 346 IPC was registered. On 30.09.2023 record regarding date of birth of victim was produced by the complainant. On 09.10.2023, parents of the victim produced victim in the police station and recovery memo



was prepared. On the basis of record produced by the complainant, date of birth of the victim was authenticated as 06.06.2005. Statement of victim was recorded in the presence of Ms. Shikha Chauhan, Legal Aid Counsel. Victim in her said statement revealed that she is studying in 11th class. She has three sisters and one brother. She is the youngest. She used to come to school in an auto from their village. Ravi, a resident of their village also used to come with her in an auto from Kharkada to Barwala. During that period she got acquainted with Ravi. On 21.09.2023, when they got down at Anant Ram Road, Barwala, accused Ravi after alluring her, took her from Barwala to Jind, from there they went to Panipat and from Panipat bus stand in an auto, took her to a room in village Brahmapur and kept her confined in that room and repeatedly committed rape upon her. Ravi threatened to kill her if she would try to talk to anyone or try to run away from there. On 08.10.2023, accused Ravi went to bring water from outside, so finding opportunity, victim went to her sister 'S' wife of 'P', resident of village 'Th' and they brought her to village Kharkhara. A prayer was made for taking action against accused Ravi.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner was not named in the FIR. Even when victim/prosecutrix recorded her statement under Section 164 Cr.P.C., the petitioner was not named as accused. Learned counsel submits that the petitioner has been involved in the present case only on the basis of disclosure statement made by co-accused, namely, Ravi, which is not admissible in the eyes of law. It is further contended that victim/prosecutrix travelled with the co-accused in public transport and stayed with him for 18 days. As such, the case set up by the prosecution is highly improbable. Even as per the disclosure statement, the allegation against the petitioner is with regard to arranging a room for their



stay. There is no allegation against the petitioner with regard to any sexual assault. Even in the medico-legal report, there is no corroborative material and there is unexplained delay in reporting the matter to the police and petitioner is behind the bars since 27.11.2023.

4. Per contra, learned State counsel opposes the grant of regular bail to the petitioner on the ground that the he is involved in helping the main accused and as such, with the aid of Section 120-B, he is also liable for the offence alleged in the FIR (supra). However, learned State counsel could not controvert the fact that there are no allegations against the petitioner with regard to sexual assault. Custody certificate filed by the respondent-State is taken on record.

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 the bars since 27.11.2023 and the investigating agency has already concluded the investigation and has submitted the final report under Section 173 Cr.P.C. The trial of the case is likely to take long time to conclude as out of 32 witnesses cited by the prosecution, none has been examined so far. Further incarceration of the petitioner, without there being the prospect of the conclusion of the trial, in the near future, would be violative of his rights under 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 democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”*

7. In view of the above, the present petition is allowed and the petitioner-Sonu 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.

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 strictly in accordance with law, without being prejudiced by observations of this Court.

May 30, 2024  
manisha

(HARPREET SINGH BRAR)  
JUDGE

- |      |                           |        |
|------|---------------------------|--------|
| (i)  | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable        | Yes/No |