



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

CRM-M-26856-2024 (O&M)
Date of decision: 22.07.2024

SAIKUL

...PETITIONER

V/S

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sanjeev Kumar Bawa, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. AG Haryana.

Mr. Vinay Kumar Pandey, Advocate
for the complainant-respondent No. 2.

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. 52 dated 26.05.2017 (in Final report the FIR is stated to be of 25.05.2017) registered under Sections 376-D, 506 of Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act 2012 at Woman Police Station Mewat, District Mewat Haryana.

2. Brief facts of the case are that the present FIR was registered on the complaint moved by complainant/father of victim-girl alleging therein that on 26.01.2017, his minor daughter Axxx (name withheld) had gone to fields for bringing the fodder then Aalim, Saikul (petitioner herein) and Naseem came there and caught hold of his daughter and accused Aamil and Saikul committed rape upon her. They extended the threat that they have prepared her video film and in case she would disclose about the incident to anyone then they shall viral her video on internet. After that, they started to blackmail his daughter and sexually exploited her for several times after showing her that



video. They also used to make her call on mobile No. 8684880919 from their mobile numbers 9991821788, 9050226722, 9050743238 and 9912700013. In this regard, he had already made a complaint to the family members of accused. He further alleged that on 04.05.2017, at about 12.00 Noon, his daughter was alone in the house and then one Kadir son of Mubeen entered into his house and he also tried to commit rape upon his daughter under the threat and pretext that he would also do the same things which earlier had been done by Aamil, Saikul and Nadeem. He extended the threat that in case she would not allow him to commit the rape then he would viral her video and she shall not be able to show her face to anyone. In the meantime, he reached to his house and after seeing him accused Kadir fled away from his house and his daughter narrated him about the entire episode. Hence, a legal notice was sought against all the culprits. On the basis of aforesaid allegations, FIR(supra) was lodged.

3. Learned counsel for the petitioner *inter alia* contends that the case set up by the prosecution is highly doubtful as the prosecutrix has been changing her stance every now and then before the Investigating Agency. The veracity of the allegations made by the prosecutrix were examined and initially, twice the jurisdictional police authorities has submitted cancellation report. It is further contended that there is a delay of 06 months in registration of the FIR(supra), which suffocates the entire case of the prosecution. Further, similarly situated co-accused who had faced the trial on the same set of allegations, was acquitted by learned trial Court vide judgment dated 02.09.2023 (Annexure P-5) and initially the petitioner was declared proclaimed offender, however, he was arrested and he is in custody since 13.12.2023.



4. Per contra, learned State counsel assisted by learned counsel for the complainant, opposes the prayer for grant of regular bail to the petitioner on the ground that there are serious and specific allegations levelled against the petitioner and material witnesses are yet to be examined.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 12.12.2023. Investigating Agency has already concluded the investigation and filed the final report under Section 173 of Cr.P.C. Trial of the case has not made much progress as none out of 18 prosecution witnesses have been examined so far. No useful purpose would be served by keeping the petitioner behind the bars and 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 democracy, 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-Saikul 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.

July 22, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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