

2024:PHHC:106726



CRM-M-27126-2024

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

CRM-M-27126-2024

Date of decision: August 20, 2024

AAMIL

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Vinay Kumar Pandey, Advocate for respondent no.2.

(THROUGH VIDEO CONFERENCING)

HARPREET SINGH BRAR, J.

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 26.5.2017 (but in final report date of FIR is stated to be 25.5.2017) registered under Sections 376-D, 506 of Indian Penal Code, 1860 and Section 6 of the Protection of Children from sexual Offence Act, 2012 at Woman Police Station Mewat, District Mewat, Haryana.

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2. The present FIR was registered on the complaint made by father of the victim on the allegations that on 26.01.2017, when his minor daughter- victim had gone to the fields to bring fodder, Aamil son of Mubeen, Saikul son of Hamida and Naseem son of Abdulla came there and caught hold of her and Aamil and Saikul committed rape upon her. They threatened her that they would viral the video of her made by them and sexually exploited her several times. They also used to make call to her on her mobile number from their mobile numbers, mentioned in the FIR (supra). The complainant also made a complaint to family members of the accused. On 04.05.2017, the victim was alone in the house and petitioner Kadir entered her house and he tried to commit rape upon her. He threatened her to viral the video of her, in case she would not allow him to commit rape upon her. In the meantime, the complainant reached at his house. Thereafter, petitioner Kadir fled away from his house and the victim narrated about the entire incident to the complainant-her father.
3. Learned counsel for the petitioner inter alia contends that similarly situated co-accused Saikul, Kadir and Naseem have been granted the concession of regular bail by this Court. A perusal of the case set up by the prosecution would reveal that there are specific allegations against the petitioner-Aamil, Saikul and Nassem. The FIR was registered after a delay of five months of the alleged incident and there is a further delay of 42 days in

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registration of the FIR. In fact the FIR (supra) has been registered as a counter blast to the earlier FIR registered on the complaint made by the co-accused. Moreover, there is no medical evidence to corroborate the version of the complainant and the prosecutrix is a married and mature lady. The FSL report is also negative qua the complicity of the petitioner.

4. Learned counsel for the petitioner relies upon the judgement of acquittal dated 02.09.2023 (Annexure P-5) in which learned trial Court recorded a specific finding that the prosecutrix was found to be residing at her in-laws house on 4.5.2017. It is further contended that once the main accused, who has allegedly committed the rape has been acquitted, trial against the petitioner would not sustain.
5. Per Contra, learned State counsel assisted by the learned counsel for the respondent submits that the charges have already been framed on 2.4.2024 and there are serious allegations against the petitioner and material witnesses have to be examined. However, he could not controvert the fact that similarly situated accused have been granted the concession of regular bail by this Court.
6. 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 bars since 08-12-2023 and the trial of the case has not even reached halfway mark as out of 15 prosecution witnesses, none has been examined so far. The culpability, if any,

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would be determined at the time of trial. 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.

7. A two Judge Bench of the Hon'ble Supreme Court in ***Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed as under: -

"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

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impression that it is a police State as both are conceptually opposite to each other."

8. In view the above, present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner Aamil is ordered to be released on regular bail during trial on his furnishing bail/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.
9. Nothing observed hereinabove shall be construed as an 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.

August 20, 2024
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(HARPREET SINGH BRAR)
JUDGE

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