



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

CRM-M-27114-2024 (O&M)

Date of decision: 30.05.2024

VIJAY KUMAR

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ajay Singh Rana, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

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. 146 dated 12.10.2023 registered under Section 8 of Protection of Children from Sexual Offences Act and Sections 354, 354-A, 323 and 34 of Indian Penal Code at Police Station Moohana Sonipat Haryana.

2. In brief, the factual matrix of the case is that on 22.11.2023 mother of victim (name not disclosed to protect the identity of the victim) arrived at Police Station Mohana and gave an application averring therein that she has two daughters. She alleged that her husband (petitioner herein) does dirty things with her and her elder daughter and abuses them and used to give them beatings. He teases her daughter. On aforesaid allegations, FIR(supra) has been registered.

3. Learned counsel for the petitioner *inter alia* contends that complainant is the wife of the petitioner and there is an ongoing dispute between them and in fact on 11.10.2023, complainant with the help of his brother and his associates gave beatings to the petitioner and thrown him from



the first floor, resulting into two fractures in his left leg. Thereafter, the petitioner was immediately referred to Civil Hospital, Sonipat and his medical report is available on record as Annexure P-3. Thereafter, the FIR(supra) has been registered. In fact, the petitioner is the victim in the present case and perusal of FIR would clearly indicate that no specific date, time or manner has been provided with regard to alleged offences and there is no other corroborative material to support the bald allegations of his wife and father of the petitioner suffered paralytic attack and is more than 70 years of age and there is no other person in the family to look after him. The allegations in the FIR(supra) are highly improbable.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that prosecutrix and victim have levelled specific allegations against the petitioner and as such he is not entitled to be released on regular bail.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 14.11.2023 and Investigating Agency has already concluded the investigation and filed the final report under Section 173 Cr.P.C. and material witnesses have already been examined. Trial of the case is likely to take long time to conclude as out of total 22 prosecution witnesses, only 6 have been examined so far. So 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 demo cracy, 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-Vijay Kumar 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.

May 30, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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