

209

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27222-2024

Date of decision: 11.07.2024

Balram @ Ballu

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Navneet Singh, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

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.528 dated 07.12.2023 under Sections 363/366-A of IPC and Section 6 of POCSO Act (Section 506 of IPC added later on) registered at Police Station Ladwa, District Kurukshetra.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 07.12.2023, she moved a complaint alleging that her daughter/victim who is 16 years old (at the time of occurrence), was upset for many days and after asking repeatedly, she disclosed that 15 days ago, the accused/petitioner took her on a motorcycle after blackmailing her at the time of tuition to his house and committed rape upon her. It is further alleged that the accused met the victim near her tuition many days ago and one day, he took her to his house for having food. Thereafter, he took her pictures and started blackmailing her and committed rape upon her time and again and, thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that there is an unexplained delay of 15 days in registration of the FIR which makes the



CRM-M-27222-2024

-2-

case of the prosecution doubtful. Even in the cross-examination, the complainant has admitted that she has moved the complaint before the concerned jurisdictional police authorities on the asking of Sube Singh. It is further contended that no case under Section 6 of POCSO Act is made out against the petitioner and there is no medical evidence as the prosecutrix/victim has refused to undergo the medical examination and material witnesses have already been examined.

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 has physically exploited the victim/prosecutrix after morphing her photographs, however, she could not controvert the fact that the petitioner is not involved in any other case.

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



CRM-M-27222-2024

-3-

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 behind the bars since 08.12.2023. 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 06 out of 18 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.

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-Balram @ Ballu 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.

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

11.07.2024

<i>Neha</i>	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No