



213

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-28000-2024 (O&M)
Date of decision: 18.07.2024

Sohil Khan

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rakesh Gupta, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Arun Gupta, Advocate for
Mr. Joginder Siwach, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in case bearing FIR No.57 dated 10.02.2024 under Sections 328, 376(2)(n), 506 of the Indian Penal Code, 1860, registered at Police Station Old Faridabad, District Faridabad.

2. The present FIR was registered on the statement of the complainant-prosecutrix on the allegations that she was pursuing B.A. Final

2024:PHHC:089746



year from Delhi University through open learning college and was also doing private job. She received a phone call from mobile number of the petitioner and disconnected the same. After that, she was receiving repeated calls and messages from the same mobile number and after some time, she started talking with the petitioner and they became friends. On asking of the petitioner, she came to Old Faridabad Metro Station and from there, the petitioner received her. On 22.11.2022, the petitioner took her to Hotel Uday Paradise and offered cold drink. After drinking the cold drink, she became unconscious and the petitioner committed wrong act with her and promised to marry her. The petitioner threatened to kill her, if she disclosed about the incident to anyone. Thereafter, on the pretext of marriage, the petitioner kept on developing physical relations with her. On 10.02.2024, when she asked the petitioner to marry her, he refused to do so and she made a phone call on 181 and went to Police Station Jaitpur, from where the police took her to Old Faridabad and thereafter, FIR (*supra*) was registered.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner and respondent No.2 fell in love and affection with each other and due to opposition by their respective family members, they eloped. The relationship between them was consensual and devoid of any *mens rea*. He further contends that the petitioner and respondent No.2 intend to marry, however, since the petitioner is behind bars, marriage between the parties could not be performed. FIR (*supra*) was registered against the petitioner under the pressure of family members of respondent No.2 and now the

2024:PHHC:089746



parties have compromised the matter.

4. *Per contra*, learned State counsel, on instructions from SI Maksud Khan, submits that there are serious allegations against the petitioner. She produces the custody certificate dated 16.07.2024 of the petitioner in the Court today, which is taken on record. However, learned State counsel could not controvert the fact that the petitioner has been in custody for the last 05 months and 04 days as on 16.07.2024 and he is not involved in any other case.

5. Learned counsel for respondent No.2 affirms the factum of compromise between the parties and submits that respondent No.2-complainant has no objection in case the present petition is allowed.

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 for the last 05 months and 04 days as on 16.07.2024; he is not involved in any other case; the parties have arrived at an amicable settlement and the trial of the case will take long time in its conclusion. The culpability, if any, 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: -

2024:PHHC:089746



“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.”

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 Sohil Khan is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

9. 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

18.07.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No