

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

CRM-M-28580-2024
Date of decision: 01.07.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Sandeep Kumar, DAG, Punjab.

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.154 dated 05.10.2022 under Sections 376/213/315/316 of IPC and Section 6 of POCSO Act, 2012 registered at Police Station Kabarwala, District Sri Muktsar Sahib.

The FIR (*supra*) was lodged on the allegations that petitioner-Harjinder Singh @ Nikka, used to visit the house of the complainant for the last eight months when her mother went to sleep at night and used to give her 100 rupees every time. It is further alleged that the prosecutrix was having stomach pain for the long time and when she told the petitioner about the same, he has given her medicine which she has consumed and when she woke up next morning, her stomach was still paining and then the stillborn came out, thereafter, her family got her admitted in the hospital and, thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and there is a delay of



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eight months in the registration of the FIR from the date of the alleged occurrence and as per the allegation, the accused has given some medicine to the complainant but the medical record does not support the case set up by the prosecution. Even the FSL and DNA report totally exonerates the petitioner. The material witnesses have been examined which includes the prosecutrix and all three witnesses have turned hostile. The petitioner is behind the bars since 15.10.2022.

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 he is the main accused and is involved in a heinous crime. However, he could not controvert the fact that the petitioner is not involved in any other case and he has been in custody for the last 01 year 08 months and 13 days as per custody certificate.

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.”

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the material witnesses have already been examined, the petitioner is behind the bars for the last 01 year 08 months and 13 days and is not involved in any other case. 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 out of 22 prosecution witnesses, only 03 have been examined so far and they have been declared hostile. 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-Harjinder Singh @ Nikka 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

01.07.2024

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