

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

CRM-M-28209-2024
Date of decision: 11.07.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. G.C. Shahpuri, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Harvana.

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.428 dated 06.12.2021 under Sections 506/363 of IPC and Section 6 of POCSO Act, registered at Police Station Saran, District Faridabad.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that his elder daughter, namely, Saraswati, aged about 14 years was studying in 4th Class (at the time of occurrence) in Mavi Modern School. On 06.12.2021 at about 08:00 A.M., she took her school bag and left for school. It is further alleged that she neither reached at School nor came back home. Thereafter, the complainant searched her at every possible place but could not trace her and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the case set up by the prosecution is highly doubtful as the prosecutrix/victim has made three different statements which contradict each other and create serious doubts

**CRM-M-28209-2024****-2-**

in the authenticity of the prosecution story. He further submits that the petitioner is behind the bars since 18.12.2021 and the charges were framed way back on 23.03.2022 and none of the witnesses has been examined till date. The delay in the conclusion of the trial is not attributable to the petitioner and the same violates the fundamental right of the petitioner under Article 21 of the Constitution of India.

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 there are serious and specific allegations against the petitioner and he has sexually exploited the minor girl who is 14 years of age (at the time of occurrence). However, she could not controvert the fact that the prosecution has failed to examine even a single witness.

The foundational concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last Court.

It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes



excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play.

Reliance in this regard is placed on the judgments rendered by the Hon'ble Supreme Court in *Akhtari Bi vs. State of M.P.*, (2001) 4 SCC 355, *Surinder Singh Alias Shingara Singh vs. State of Punjab*, (2005) SCC (CrI) 1674, *P. Ramachandra Rao vs. State of Karnataka*, (2002) 4 SCC 578, *Babu Singh and others vs. State of U.P.*, (1978) 1 SCC 579, *Takht Singh and others vs. State of M.P.*, (2001) 10 SCC 463; *Special Leave to Appeal (CrI) No.2356 of 2010*, *Kushal Singh vs. State of U.P. (2JJ.)* and *Fazal vs. State of Uttar Pradesh*, (2012) 5 SCC 752.

A two Judge Bench of 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:

“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,

**CRM-M-28209-2024****-4-**

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 petitioner is behind the bars since 18.12.2021. In spite of the fact that the investigation is complete and the final report under Section 173 Cr.P.C. has been presented before the concerned Court, the trial of the case has not made any significant progress. Out of the 27 witnesses cited by the prosecution, none has been examined so far. The culpability of the accused/petitioner, if any, would only be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner and detaining him further, 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. Ergo, I am inclined to allow the prayer of the petitioner.

Accordingly, the present petition is allowed. The petitioner-Badal Kumar is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Illaqa Magistrate/Trial Court/Duty Magistrate.

The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case lest it may prejudice the outcome of the case pending before the 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
Neha

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