



209 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29338-2024 (O&M)

Date of decision: 05.09.2024

AMRIK SINGH @ GORA

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Hitesh Chopra, Advocate for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

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 case bearing FIR No. 22 dated 27.02.2023 registered under Section 376 of Indian Penal Code and Section 4 of Protection of Women from Sexual Offences Act 2012 at Police Station Sadar Gurdaspur District Gurdaspur.

2. In brief, the prosecution story is that present case was registered on the statement of Amandeep Kaur wife of Gurpreet Singh to the effect that she has two daughters namely Anmolpreet Kaur, aged about 16 years and prosecutrix, aged about 12 years. Her daughter/prosecutrix was studying in 5th standard in a Public School, Gurdaspur. On 21.02.2023 in the morning, she went to school on Activa and returned back to home at about 03:00 PM. Her daughter/prosecutrix disclosed her that when she was going to school and reached in the vicinity of village Hallah Chayia, Guri stopped her, who told her that they would go together to Gurdaspur. After some times, they went to Gurdaspur on Activa. When they reached Gurdaspur, then Guri told her that she had to leave her (Guri) at Dinanagar on scooty. When they were going towards Dinanagar and reached in the vicinity of bypass Dinanagar, then



brother of petitioner was already standing there on bullet motorcycle. Then Guri told her that they could not sit on the motorcycle together and told her to sit with her brother on the bullet motorcycle and she (Guri) would come on the scooty. She (prosecutrix) sit on the motorcycle of brother of petitioner, who took her towards Pathankot in a hotel and started doing obscene acts with her. Despite opposing her, he made physical relations with her against her wish and then he left her Gurdaspur near petrol pump. On the basis of said statement, the FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that on the same set of allegations, the real sister of the petitioner was found to be innocent. As such, the Investigating Agency itself has found the case set up by the prosecution to be incorrect. Sister of the petitioner is declared innocent as on the basis of CCTV footage and other material. The petitioner is behind the bars since 27.02.2023 and material witnesses have already been examined by the learned trial Court. It is further contended that when the prosecutrix was subjected to medico legal examination, nothing suggestive of any sexual assault has been detected and FSL report is still awaited. Moreover, there is an inordinate and unexplained delay of 06 days in lodging the FIR(supra) and date of birth of the prosecutrix is yet to be proved in accordance with law. Moreover, Aadhar Card cannot be accepted as reliable piece of evidence for determining the age of the prosecutrix.

4. Per contra, the learned State counsel opposes the prayer made by learned counsel for the petitioner on the ground that petitioner is the main accused and there are serious and specific allegations levelled against him and moreover, the birth certificate of the prosecutrix was obtained from Municipal



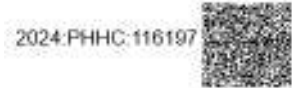
Authorities, which shows that at the time of incident, the prosecutrix was minor.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 28.02.2023 and not involved in any other case. Trial of the case is likely to take long time to conclude as out of total 22 prosecution witnesses, only 2 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.

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."

6. Accordingly, the present petition is allowed. The petitioner-Amrik Singh @ Gora is ordered to be released on regular bail, subject to his



furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

7. 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.

September 05, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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