



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

**CRM-M-30248-2024
Date of decision: 19.09.2024**

PHOOL CHAND CHAUDHARY @ FUL CHAND KUMAR

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Brijesh Nandan, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This is second petition filed under Section 439 Cr.P.C. praying for grant of concession of regular bail to the petitioner pending trial in case FIR No.58 dated 08.04.2023 registered under Sections 363, 366-A of Indian Penal Code (Section 376 IPC and Section 6 of POCSO Act, 2012 were added later on) at Police Station Sultanpur Lodhi, District Kapurthala.

2. Brief facts of the prosecution case are that on dated 08.03.2023 at about 10 A.M., the complainant along with his family went out for work. On the same day, Phool Chand (petitioner herein) allured and enticed away his younger daughter namely Nisha Kumari in connivance with his sister Janki Devi and also took cash of Rs.34,000/- and silver jewelry, Aadhar Card of his daughter and her daily wearing clothes. When the matter came to their knowledge despite their best efforts, they had failed to trace the whereabouts of his daughter. Phool Chand (petitioner) called his sister on mobile and said that if he gets a chance then he would kill this girl (daughter of complainant). It was



also specifically mentioned therein that the above-said person was already married to elder daughter of the complainant, namely, Raman Kumari, but had taken divorced from her. Thereafter, the petitioner had enticed away younger daughter of the complainant and threatened to kill her. Hence, the FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that petitioner has been falsely implicated in the present case. The petitioner was merely of 18 years of age at the time of incident and the relationship between the petitioner and prosecutrix was consensual in nature. Further, material witnesses have already been examined and both prosecutrix and the complainant have not supported the case of the prosecution and they have been declared hostile by learned Public Prosecutor. Learned counsel further submits that the petitioner is behind the bars since 08.04.2023 and is not involved in any other case.

4. Learned State counsel produces custody certificate as well as status report dated 18.09.2024 filed by way of an affidavit of Vipin Kumar, PPS, Deputy Superintendent of Police, Sub Division Sultanpur Lodhi, District Kapurthala, which are taken on record. *Per contra*, learned State counsel submits that there is sufficient material available on record to indicate the complicity of the petitioner, however, he could not controvert the fact that prosecutrix and complainant have turned hostile in the Court below, as discernible from the status report.

5. 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 the bars for last 01 year, 05 months and 06 days as on 18.09.2024 and he is not involved in any other case. The investigating agency has already



concluded the investigation and has submitted the final report under Section 173 Cr.P.C. The trial of the case has not even reached half way mark, as out of 22 witnesses cited by the prosecution, only 04 have been examined. Further incarceration of the petitioner, without there being the prospect of the conclusion of the trial, in the near future, would be violative of his rights under Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

6. 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."

7. In view of the above, the present petition is allowed and the petitioner-Phool Chand Chaudhary @ Ful Chand Kumar 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.

8. Nothing observed hereinabove shall be construed to be an

expression of opinion by this Court lest it may prejudice the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

September 19, 2024
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(HARPREET SINGH BRAR)
JUDGE

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