

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

CRM-M-30481-2024
Date of decision: 10.07.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Saini, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Harvana.

HARPREET SINGH BRAR, J. (ORAL)

This 4th petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.0014 dated 15.01.2022 under Section 346 of IPC (Sections 216/342/366/506/376(2)(n) of IPC added later on) registered at Police Station Civil Line Jind, District Jind. The earlier three petitions bearing CRM-M No.31619 of 2022, CRM-M No.10984 of 2023 and CRM-M No.39840 of 2023 were dismissed as withdrawn on 14.12.2022, 25.05.2023 and 10.10.2023, respectively.

The FIR (*supra*) was lodged on the statement of the complainant, namely, Rahul, by alleging that his sister/prosecutrix aged about 18 years was missing from the house from 15.01.2022 at 02:00 P.M. She left the house without any information and on search, he could not trace her and thus, the instant FIR got registered and during investigation, on 18.01.2022, the mother and brother of the victim produced the victim, namely, Khushi and her statement got recorded and Sections 366/342/506/120-B/376(2)(n) of IPC were



CRM-M-30481-2024

-2-

added.

Learned counsel for the petitioner *inter alia* contends that the petitioner and the prosecutrix were in a consensual relationship and started living together, which was opposed by the family of the prosecutrix and an agreement (Annexure P-2) executed by the prosecutrix indicating her desire to live with the petitioner and therefore, at that time, the family of the prosecutrix took her away and under their pressure, she has recorded her statement under Section 164 Cr.P.C. He further submits that the petitioner is behind the bars since 15.01.2022 and the prosecution has failed to conclude the trial and even the DNA report has not been furnished before the learned trial Court.

The learned State counsel has filed the custody certificate along with reply by way of affidavit 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 petitioner is the main accused and the prosecutrix has levelled specific allegations against him in her statement under Section 164 Cr.P.C. recorded before the jurisdictional Magistrate and she has also supported the case of the prosecution at the time of her deposition before the learned trial Court as the witness.

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 petitioner is behind the bars for 02 years 05 months and 20 days as per custody certificate. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and the trial of the case has not even reached halfway mark as only 05 out of 17 prosecution witnesses have been examined so far. 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.

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-Ajay 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

10.07.2024
Neha

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