

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

CRM-M-31367-2024
Date of decision: 23.10.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Impinder Singh Dhaliwal, Advocate
for the petitioner.

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.54 dated 05.04.2024 under Sections 363/366-A of IPC (Sections 376(3)/506 of IPC and Sections 3/4 of POCSO Act has been added later on) registered at Police Station City Malout, District Sri Muktsar Sahib (Annexure P-1).

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 04.04.2024 at around 11:30 P.M., her grand daughter, namely, Chanchal, went to the bathroom and did not come back. The complainant tried to search her everywhere but could not trace her. It is further alleged that when the complainant went to the house of the accused/petitioner, as he had a bad eye on her grand daughter, he and his family clearly refused that her grand daughter is not present in their house. Thereafter, her grand daughter came out from their house and told her that the accused/petitioner took her grand daughter forcibly with him by holding her arm on the pretext of



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marriage 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 he has no concern with the alleged occurrence. The perusal of the material collected during investigation in the final report clearly indicates that no offence under the provisions of Section 376 of IPC or Sections 3/4 of POCSO Act is made out. After making material improvements, these allegations were made in the supplementary statement. The allegations with regard to the rape are falsified from the medico legal report. The prosecutrix was examined after registration of the FIR (*supra*) and the history/brief description of the incident as narrated by the victim was recorded in the medico legal report and the following was observed:-

‘Alleged history of assault on 04.04.2024. Patient claim to know the accused, Rohit Kumar since one year. The patient has been in communication with the accused since the last six months on phone. The patient has met the accused on several occasions. According to the patient, the accused took the patient to his home. The patient went to his home on the request of the accused mother. The patient went to the accused home on her consent. The patient claims to have no physical contact on 04.04.2024 with the accused. No history of penetration. No history of kissing. No history of clothes removal.’

The perusal of the above clearly indicates that in the initial version, there was no allegation with regard to any rape and further, nothing has been found during her medical examination which would suggest that victim/prosecutrix was subjected to sexual assault. He further submits that even in her statement recorded under Section 164 Cr.P.C., the allegations of rape were not levelled and it was only indicated that the petitioner wanted to establish physical relations. The petitioner is behind the bars since 08.04.2024 and he is not involved in any other case.



The learned State counsel has filed 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 the victim was minor of 14 years of age at the time of incident, as such, the petitioner is not entitled to any relief.

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 since 08.04.2024. 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

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made much progress as out of 20 prosecution witnesses, none has been examined so far. 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-Rohit 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.

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

23.10.2024*Neha*

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