

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

CRM-M-32725-2024
Date of decision: 17.07.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sanjeev Kumar, Advocate for
Mr. Ravi Malik, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, 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.204 dated 29.02.2024 under Sections 376(2)(n)/323 of IPC registered at Police Station Palla, Faridabad (Annexure P-1).

The FIR (*supra*) was lodged on the statement of the complainant/prosecutrix by alleging that she was working with Jiva Company, NHPC, Faridabad, for the last two years and she was married in the year 2009 with one Deepak Mehto and in the year 2016, she was working with Victor Company, Okhla, where the accused/petitioner was also working and there she got introduced with the petitioner and they have become friends and due to this friendship, the accused/petitioner has developed physical relations many times with her at Surajkund in Oyo Hotel, NHPC and Badkhal Border Oyo Hotel with the consent of both. In July, 2023, the accused/petitioner came to her house and a dispute has arisen between her and her husband. Thereafter, the

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complainant/prosecutrix left her husband and children and started residing in Dheeraj Nagar, Palla, Faridabad from the last six months. It is further alleged that the accused/petitioner again developed physical relations with her forcibly and when she resisted, the accused/petitioner used to beat her and, thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner and the prosecutrix were working in the same office and they were in a consensual relationship. The perusal of the FIR indicates that the prosecutrix has admitted of having physical relationship with the petitioner with consent of both, however, when prosecutrix started residing in Fardiabad, the petitioner made physical relationship with her forcibly and against her consent. Learned counsel for the petitioner relies upon the photographs of the petitioner and the prosecutrix to substantiate his claim that it was a consensual relationship between two major and mature persons and nothing is available on record which would corroborate the case set up by the prosecution. He further submits that there is delay of six months in the registration of the FIR and now the prosecutrix has given her affidavit (Annexure P-3) in which she has clearly stated that she does not want any further legal action against the petitioner and she has no objection in case, the petitioner is released on bail. The petitioner is not involved in any other case.

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 physically & repeatedly exploited the prosecutrix and the prosecutrix has reiterated her allegations in her

statement recorded under Section 164 Cr.P.C., however, he could not controvert the fact that the petitioner is not involved in any other case.

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 the last 04 months as per custody certificate. 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 made much progress as out of 14 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-Raj Kumar Raigar 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

17.07.2024
Neha

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