



213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34184-2024 (O&M)
Date of decision: 24.07.2024

SHADEEN @ NINJA

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manuj Nagrath, 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 the case bearing FIR No. 48 dated 28.04.2024 registered under Sections 363, 366, 376-D and 354 of Indian Penal Code, 1860 read with Section 4 of Protection of Children from Sexual Offences Act, 2012 at Police Station Sadar Gurdaspur, District Gurdaspur.
2. Present FIR was registered on the statement of complainant Teg Ali on the allegations that on 09.04.2024, the daughter/prosecutrix of his maternal uncle Nazamdeen, whose date of birth is 15.10.2007, aged about 16 ½ years, was living with him. It was further stated by the complainant that Ninja (petitioner herein), Ballu and Nami came in his house and put proposal for marriage of the prosecutrix, but they refused and on 14.04.2024, at about 08/09.00 PM, they came on Swift car and kidnapped the prosecutrix, who was working on the road side. He tried to trace the prosecutrix, but to no avail. The complainant had firm belief that the above said persons had kidnapped the prosecutrix on the false pretext of marriage. On the basis of aforesaid allegations, FIR(supra) was lodged.



3. Learned counsel for the petitioner *inter alia* contends that there is a delay of 14 days in lodging the FIR(supra), which creates serious doubt on the case set up by the prosecution. It is further contended that no allegation with regard to sexual assault on the prosecutrix has been levelled against the petitioner and thereafter, when the prosecutrix was produced before the jurisdictional Magistrate and her statement under Section 164 of Cr.P.C. was recorded, she did not level any allegation with regard to rape against the petitioner. Learned counsel further relies upon the compromise i.e. affidavit of the complainant (Annexure P-3), which clearly indicate that a compromise has taken place between the parties.

4. Per contra, the learned State counsel opposes the prayer made by learned counsel for the petitioner on the ground that investigation of the FIR(supra) has not been concluded and other accused are yet to be arrested. The veracity of the compromise cannot be seen at this stage. However, he could not controvert the fact that petitioner is having clean antecedents and he is not involved in any other case.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 07.05.2024. Trial of the case is likely to take long time to conclude as investigation is still going on. No useful purpose would be served by keeping the petitioner behind the bars as nothing is required to be recovered from him. 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 demo cracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

7. Accordingly, the present petition is allowed. The petitioner-Shadeen @ Ninja is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

8. 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.

July 24, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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