

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

CRM-M-34521-2024
Date of decision: 25.07.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 483 BNSS seeking bail in case bearing FIR No.65 dated 10.03.2024 under Sections 452/34/506 of IPC and Section 10 of the POCSO Act, 2012 (Section 8 was deleted later on) registered at Police Station Mullana, District Ambala.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 09.03.2024 night, the complainant along with her daughters was sleeping in her house. In the night at around 12:00 A.M. her daughters woke up and started crying. When the complainant woke up, she saw that two boys, namely, Vansh and Vijay (the petitioner herein), were dragging her daughters badly and they were sexually harassing her daughters and threatening them that they will kill them and, thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the prosecutrix was produced before the jurisdictional Magistrate and her statement under Section 164 Cr.P.C. was recorded, wherein, she has stated that petitioner is not involved in the commission of the alleged offence. The investigation of



CRM-M-34521-2024

-2-

the case is complete. Two of the victims as well as the complainant have been examined by the prosecution and all of them have not supported the case of the prosecution and the learned Public Prosecutor has declared them hostile. The petitioner is behind the bars since 11.03.2024.

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 the petitioner is accused of heinous crime which attracts provisions of the POCSO Act and his complicity would be examined by the learned trial Court. She further submits that the petitioner is also involved in one more 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 since 12.03.2024. 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 made much progress as only 03 out of 10 prosecution witnesses have been



CRM-M-34521-2024

-3-

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.

Keeping in view the law laid down by the Hon'ble Supreme Court of India in 'Prabhakar Tewari Vs. State of U.P. and another' 2020 (1) R.C.R. (Criminal 831) and 'Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another', 2012 (2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

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-Vijay 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

25.07.2024

Neha

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