

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

CRM-M-35199-2024
Date of decision: 30.07.2024

....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 439 Cr.P.C. seeking regular bail in case bearing FIR No.588 dated 04.09.2023 under Sections 376(2)n/354-C/506 of IPC registered at Police Station Palla, District Faridabad.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that in October/November, 2022, she came to know that the accused/petitioner prepared her photos and videos while she was taking bath and by showing the same to the complainant threatened her that if she would not develop sexual relations with him, he would send it to her husband and under such threat, repeatedly committed rape upon her and thus, the instant FIR was registered.

Learned counsel for the petitioner *inter alia* contends that the FIR (*supra*) has been registered after a delay of more than one year which totally suffocates the case of the prosecution and creates serious doubt on the case set up by the prosecution. He further submits that version of the prosecutrix is



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totally contradictory to her stand taken when statement under Section 164 Cr.P.C. was recorded. During investigation, no photograph or video of the complainant, while she was taking bath, was found and these allegations are totally baseless. He further submits that mobile and laptop of the petitioner is in the possession of the complainant as the Investigating Agency has recovered the same from the complainant. The prosecutrix is major and there is no medical evidence to corroborate the version of the prosecutrix. The petitioner is behind the bars since 26.02.2024 and is having clean antecedents.

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 petitioner has sexually exploited the prosecutrix by threatening her to viral her video and photographs taken by him while she was taking bath, as such, he is not entitled to the concession of regular bail, however, she could not controvert the fact that the petitioner is not involved in any other case and has already undergone total sentence of 05 months and 02 days as on 27.07.2024.

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



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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 26.02.2024 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 15 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-Pardeep 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

30.07.2024

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