

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

CRM-M-36693-2024

Date of decision: 06.08.2024

Dilsher alias Jony

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Chander Kant Rana, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

This second petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.77 dated 05.02.2024 under Sections 323/376(2)(n)/420/452/506 of IPC and Sections 379-A/201 of IPC added later on, registered at Police Station Gharaunda, District Karnal. Earlier petition for regular bail was dismissed as withdrawn with liberty to file fresh petition by adding offence vide order dated 23.07.2024.

Mr. Ram Karan Agnihotri, Advocate puts in appearance on behalf of respondent No.2 and files his *vakalatnama* in the Court today which is taken on record.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that during panchayat elections in the month of November, 2022, accused-Jony (the petitioner herein) came to her shop for purchasing goods and he also used to make payments. One day, he did not pay the money and took her mobile number on the pretext that he will transfer the money on her mobile phone. Thereafter, the accused started talking to her. One day, he came to her

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shop and stated that he wants to take care of her children and will also bear all the expenses but the complainant refused. It is further alleged that he told the complainant that he wants to marry her and on the pretext of marriage, the accused kept on making physical relations with her and he also took her obscene photographs in his mobile phone, on account of which, the accused started blackmailing the complainant on the pretext that if she did not develop physical relations with him, he will make the photographs viral. The accused also extorted Rs.2 lakh from her by blackmailing her. Further, the accused threatened her to purchase him a motorcycle otherwise he will develop physical relations with her 15 years old daughter also. The complainant got the accused motorcycle on installments. On 30.12.2023, when the complainant had gone to Gharaunda, the accused chased her and caught hold of her near Railway crossing. He snatched Rs.4,000/- from her, broke her mobile phone and gave her slaps. On 04.02.2024, the accused stopped her in village Baratpur and tried to drag her inside the fields of sugarcane with an intention to develop physical relations, however, when the complainant shouted loudly, the accused left the spot after giving her threats that he will kidnap her daughter and will rape her. Out of this threat, for the last 15 days, the complainant's daughter is not going to school due to fear. The accused also threatened her to kill her son 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. The perusal of the FIR clearly indicates that the petitioner and the prosecutrix were in a consensual relationship. The prosecutrix is a mature lady of 33 years of age having three children and both of them continued their relationship from the



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month of November, 2022 to 04th February, 2024. It is further contended that the Investigating Agency has already concluded the investigation and presented the final report and the petitioner is not involved in any other case.

The learned State counsel assisted by learned counsel for respondent No.2, per contra, opposes the grant of regular bail to the petitioner on the ground that there are specific and serious allegations against the petitioner. He exploited the prosecutrix who is a widow and he has even extorted more than Rs.2 lakh from the prosecutrix and the prosecutrix is being pressurized to compromise the matter.

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 17.02.2024. 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 out of 16 prosecution witnesses, none has been examined so far. The culpability, if any, would be determined at the time of



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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-Dilsher @ Jony 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

06.08.2024

Neha

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