

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36728-2024
Date of decision: 06.08.2024

Rohit Kumar

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jagmeet Singh Moudgill, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

This petition has been filed under Section 483 of BNSS, 2023 seeking regular bail in case bearing FIR No.37 dated 14.03.2023 under Section 376(2)(n)/346/420 of IPC registered at Police Station Shambhu, District Patiala (Annexure P-1).

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 10.03.2023, he along with his son gone for Jagran and his daughter along with his daughter-in-law were present at home. It is further alleged that they gone to sleep after having their meal at about 08:30 P.M. At about 10:30 P.M., when his daughter-in-law woke up, she saw that his daughter was not lying on her bed. Thereafter, his daughter-in-law called the complainant and narrated the whole incident and they searched her everywhere but could not trace her and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the perusal of the record clearly indicates that the petitioner as well as the prosecutrix were in a consensual relationship and initially, when the prosecutrix was traced, she did not record her statement under Section 164 Cr.P.C. on

19.03.2023 but she recorded her statement before the jurisdictional Magistrate under Section 164 Cr.P.C. on 22.03.2023 in which she has categorically stated that she has left her house with her own free will. He further relies upon her statement attached herewith as Annexure P-3. Thereafter, the complainant also submitted his affidavit that he does not want any further action with regard to his complaint. The copy of the affidavit is available on record as Annexure P-4. Curiously, after a gap of approximately four months on 17.07.2023, the prosecutrix suffered a second statement and submitted that at the time of recording her first statement, she was under pressure and the petitioner has committed rape upon her on the pretext of marriage. He further stated that there is no medical evidence as the prosecutrix has refused to undergo medical examination. There is no medical and even the DNA report is negative *qua* the petitioner.

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 has exploited the prosecutrix on the pretext of marriage, 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 since 24.07.2023 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 only 01 out of 17 prosecution witnesses including the prosecutrix 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-Rohit 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

06.08.2024

<i>Neha</i>	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No