



218

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

CRM-M-39456-2024

Date of decision: 22.08.2024

Pankaj

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Sumit Singh Chahal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No.034 dated 03.02.2023 under Section 376 of IPC and Section 6 of POCSO Act, 2012 registered at Police Station Haibowal, District Ludhiana (Punjab).

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 30.01.2023, at around 12 o'clock during night time, her daughter, namely, Rakhi, woke up to go to bathroom and said 'mom, come with me,' and the complainant told her to go, after which, her daughter went to use the bathroom and the complainant fell asleep. Thereafter, when her daughter came back, she woke the complainant up and told her that when she went to the bathroom, the accused/petitioner, namely, Pankaj, who lives in a room next to the room of the complainant, put his hand in the mouth of her daughter and took her to his room and forcibly raped her and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the



CRM-M-39456-2024

-2-

petitioner has been falsely implicated in the present case as the petitioner and the complainant are neighbours and perusal of the record clearly indicates that there is no evidence with regard to enticing away the prosecutrix. Surprisingly, the statement of the prosecutrix under Section 164 Cr.P.C. was recorded after a delay of 35 days and it would be a moot point to be decided by the learned trial Court that if such statement would have any evidentiary value or not. Even in the medico legal report, nothing suggestive of the sexual assault has been found. He further submits that the petitioner is behind the bars since 03.02.2023 and the prosecution witnesses are not coming forward to record their statement before the learned trial Court, on account of which, non-bailable warrants have been issued to the prosecution witnesses by the learned trial Court.

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 prosecutrix was minor at the time of the incident, as such, the consent would be material and petitioner is the main accused and the DNA report clearly proves his complicity. However, he could not controvert the fact that the petitioner is not involved in any other case and has already undergone actual custody of 01 year 06 months and 14 days as on 20.08.2024.

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 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 03.02.2023. 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 13 prosecution witnesses, none has been examined so far and the learned trial Court has issued non-bailable warrants to the prosecution witnesses. 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-Pankaj 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

22.08.2024
Neha

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