



212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41426-2024 (O&M)
Date of decision: 30.08.2024

KRISHAN SINGH @ KALI

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.K.S. Phoolka, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. AG Punjab.

HARPREET SINGH BRAR J. (ORAL)

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 18 dated 19.02.2024 registered under Sections 363, 366-A of Indian Penal Code at Police Station Sangat District Bathinda.

2. FIR(supra) was registered on the statement of complainant-Sukhmander Singh on the allegations that he is doing the labour work and has six daughters and one son from his marriage. His daughter Harpreet Kaur, whose date of birth is 23.06.2007, is studying in 12th Class. On 01.02.2024, when all the family members were sleeping in their rooms, then at about 2.00 AM in the night when he went to bathroom, he saw that her daughter-Harpreet Kaur was not present in her Cot. Then he woken up the whole family and started searching Harpreet Kaur but could not find her. Thereafter, they came to know that on the midnight of 1/2-02-2024 Krishan Singh alias Kali (petitioner herein) has enticed away the daughter of the complainant on the fake promise of marriage. On the basis of aforesaid allegations, FIR(supra) was registered.



3. Learned counsel for the petitioner *inter alia* contends that perusal of the allegations contained in the FIR(supra) clearly indicates that daughter of the complainant has gone from her parental house on her own will. Further, she travelled to various cities and public places and no opposition or any hue and cry was raised by the prosecutrix. Moreover, nothing incriminating has been found during the investigation with regard to any sexual assault on the prosecutrix and she was admittedly more than 17 years of age, at the time of alleged occurrence and it would be a moot point to be determined by learned trial Court, as to whether the prosecutrix was minor or major, at the time of alleged incident as no credible record to prove the birth of the prosecutrix has been attached with the final report.

4. Per contra, the learned State counsel opposes the prayer made by learned counsel for the petitioner on the ground that prosecutrix has stated before the jurisdictional Magistrate in her statement recorded under Section 164 Cr.P.C. that petitioner has enticed her away and petitioner is responsible for the alleged offences. However, he could not controvert the fact that petitioner is not involved in any other case and investigation of the case has been concluded.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 14.03.2024 as on 29.08.2024. Trial of the case is likely to take long time to conclude as out of total 12 prosecution witnesses, none has been examined so far. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the

Constitution of India. Culpability, if any, would be determined at the time of the trial.

6. 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 demo cracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

7. Accordingly, the present petition is allowed. The petitioner- Krishan Singh @ Kali is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

8. 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.

August 30, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No