



CRM-M-42630-2024 (O&M)
Date of decision: 05.09.2024

...PETITIONER

V/S

...RESPONDENT

Present: Ms. Samridhi Sareen, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (ORAL)

1. This is the first petition filed under Section 483 of Bharatiya
Nagarik Suraksha Sanhita seeking grant of regular bail to the petitioner in the
case bearing FIR No. 0971 dated 26.11.2021 registered under Sections 363,
366-A, 376(2)(n), 506 and 120-B of Indian Penal Code and Section 6 of
Protection of Children from Sexual Offences Act, 2012 at Police Station
Barwala, District Hisar.

2. FIR in present case was registered on complaint dated 26.11.2021 made by brother of victim wherein he reported to the concerned police that his parents are labourer. They are three brothers and sisters. Their parents, leaving them at home, went out of station for their work. His younger sister (victim herein) went to school. Her school is upto 11.30 am, but after the school hours, she did not return. Therefore, they searched for her. When they checked CCTV camera installed on Barwala main road, they saw that one boy namely Rocky and victim were going while talking with each other. Rocky was also not present in his house. They are sure that he has enticed away the victim. Her date of birth is 11.02.2007. She is 14 years old.



On the basis of aforesaid allegations, FIR(supra) was lodged.

3. Learned counsel for the petitioner *inter alia* contends that prosecutrix has recorded three different statements i.e. one before the Councillor, one before the jurisdictional Magistrate recorded under Section 164 of Cr.P.C. and thereafter one as prosecution witness before the learned trial Court and she has taken inconsistent stand on all three occasions. Petitioner and prosecutrix were allegedly recovered from a Hotel. However, no evidence in this regard has been produced by the Investigating Agency to prove the same and even when the prosecutrix was subjected to medical examination, nothing has been detected, which would remotely suggest that she was subjected to any sexual assault. The petitioner is behind the bars since 28.11.2021. Thus, he has been in custody for the last 02 years and 09 months and the prosecution has failed to conclude its evidence and as such the delay in concluding the trial would violate the right of the petitioner enshrined under Article 21 of Constitution of India.

4. Per contra, the learned State counsel opposes the prayer made by learned counsel for the petitioner on the ground that at the time of incident, prosecutrix was minor and as such, her consent is immaterial, however, he could not controvert the fact that petitioner is not involved in any other case and he is in custody for the last 02 years 09 months and 06 days.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 29.11.2021 as on 03.09.2024 and despite passing of almost three three years, prosecution has not been able to conclude its evidence. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future,

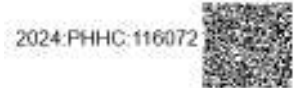


would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

6. The foundational concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last Court.

7. It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play.

8. In this regard, reference is being made to the law laid down by the Hon'ble Supreme Court in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- ***Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh Vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578, Babu Singh and others Vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others Vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh Vs. State of U.P. (2JJ.) and Fazal Vs. State of Uttar Pradesh, (2012) 5 SCC 752.***



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

10. 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.

September 05, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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