

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

CRM-M-43891-2024
Date of decision: 10.09.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sarthak Karol, Advocate and
Ms. Neelakshi Bhadauria, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.399 dated 25.11.2023 (Annexure P-1) under Sections 363/366 of IPC and Sections 4/6 of POCSO Act (Section 366A was deleted and Section 366 of IPC was added along with Sections 4 & 6 of POCSO Act) registered at Police Station City Sarai Khawaja, District Faridabad.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 22.11.2023 at about 11:30 P.M., his sister 'C' who is 17 years of age (at the time of incident) has been enticed away by some unknown person and the complainant raised suspicion on accused/petitioner who was residing as tenant one year before. He tried to search the victim/prosecutrix but could not trace her and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that petitioner and the prosecutrix fall in love with each other and their relationship



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was opposed to the family of the prosecutrix. The statement of the prosecutrix was recorded by the jurisdictional police authorities as well as by the concerned jurisdictional Magistrate under Section 164 Cr.P.C. and on both occasions, she has taken a categorical stand that she has left her home on her own violation as her mother used to give her severe beatings. The prosecutrix was subjected to medical examination and nothing suggestive of sexual assault has been detected. In this regard, he further placed reliance upon the medico legal report of the prosecutrix (Annexure P-3). The petitioner is 22 years of age and the age of the prosecutrix has not been proved in accordance with law and it would be a moot point to be decided by the learned trial Court whether she was below the age of 18 years at the time of alleged incident or not. The petitioner is behind the bars since 06.12.2023 and he is not involved in any other case.

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 there are serious and specific allegations against the petitioner and at the time of alleged incident, the prosecutrix was minor as her consent is immaterial. 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 06.12.2023. 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 20 prosecution witnesses, none 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-Akash 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

10.09.2024
Neha

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