



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

CRM-M-47090-2024
Date of decision: 25.09.2024

AJAYPAL SINGH MUNDAY
...PETITIONER
V/S

STATE OF HARYANA AND ANOTHER
...RESPONDENTS

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.P.S. Deol, Sr. Advocate with
 Mr. Mandeep Singh Gill, Advocate
 for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This is first petition filed under Section 483 of BNSS, 2023 praying for grant of concession of regular bail to the petitioner pending trial in case FIR No.169 dated 13.06.2024 registered under Sections 376(2)(n) of Indian Penal Code at Police Station Sector 14, Gurugram.
2. Brief facts of the case of the prosecution are that on 14.05.2024, the complainant/prosecutrix presented a written complaint in the concerned police station with the allegations that she got acquainted with the petitioner in November 2023, through a dating application. She told the petitioner that she is unmarried and looking to marry someone and if he also wanted to get married, then only she would take things forward. Upon this, the petitioner also told her that he also joined the dating app with the intention of marriage. Then, they first met on 26.11.2023 at Cafe Touino, M.G. Road, Gurugram and thereafter, they met several times at different places. Thereafter, on 22.12.2023, the petitioner called her to Country Inn Hotel, Sector-12, Gurugram. When they



were together, the petitioner tried to make physical relations with her on the pretext of false promise of marriage. After repeated insistence, the complainant agreed and physical relations were made between them. Thereafter, she went to Jaipur with him, where also physical relations were established between them many times. However, after some time, she became suspicious as the petitioner was changing his plans, so she inquired about him on Internet and came to know that he was already married and having a son. She called the petitioner-accused, who apologized for his acts. Hence, the FIR (supra) was registered.

3. Learned senior counsel for the petitioner *inter alia* contends that the prosecutrix is major and mature lady of 34 years of age and both of them became friends through a dating app (Hinge). Thereafter, they met for the first time on 26.11.2023 and as per the case set up by the prosecution, they developed physical relations on 22.12.2023 in a hotel in Sector 12, Gurugram. Thereafter, the prosecutrix accompanied the petitioner on a road trip in her own car and they developed consensual physical relations and there is an unexplained delay of 06 months in registration of the FIR (supra) and there is no other evidence in the shape of any medical evidence to corroborate the case set up by the prosecutrix. Further, at the time, when they became friends, no promise of marriage was ever made by the petitioner and he is behind the bars since 23.06.2024. The investigation is already complete and the petitioner is not involved in any other criminal activity.

4. *Per contra*, learned State counsel produces custody certificate, which is taken on record and opposes the prayer of the petitioner on the ground that there are serious and specific allegations against the petitioner and prosecutrix is yet to be examined.



5. Mr. Amitabh Tewari, Advocate has put in appearance on behalf of respondent No.2 and filed his *vakalatnama* which is taken on record. Registry is directed to tag the same at the appropriate place. Learned counsel opposes the prayer of the petitioner on the ground that there is sufficient material available on record to indicate the complicity of the petitioner and from the very inception, he earned the trust and friendship of the prosecutrix on the false promise of marriage, whereas, he was already married. The chats, which are already available on record being part of the final report, clearly indicate that petitioner had been promising the prosecutrix that he would marry her. As such, his culpable intention is duly proved on record.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind the bars for last more than 03 months and he is not involved in any other case. The investigating agency has already concluded the investigation and has submitted the final report under Section 173 Cr.P.C. Further incarceration of the petitioner, without there being the prospect of the conclusion of the trial, in the near future, would be violative of his rights under 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 democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

7. In view of the above, the present petition is allowed and the petitioner-Ajaypal Singh Munday 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.

8. Nothing observed hereinabove shall be construed to be an expression of opinion by this Court lest it may prejudice the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

September 25, 2024
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(HARPREET SINGH BRAR)
JUDGE

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