



Date of decision: 01.10.2024

...PETITIONER

V/S

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Sandeep Kumar, DAG 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 case bearing FIR No. 30 dated 26.01.2022 registered under Sections 363, 366-A, 376 (added later on), 120-B of Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act 2012 (added later on) at Police Station Dera Bassi, Mohali.

2. The FIR(supra) has been lodged on the basis of statement of complainant Rajan on the allegations that he has four children and he alongwith his family used to work as bricklayers at AKM Brick kiln Village Bijanpur. On 25.01.2022, at around 09:00 PM, he alongwith his family was sitting in their hut after having meal. His little daughter (name withheld), aged about 14 years, went out to urinate in the bathroom but she did not come back till late, so they went out to see her. They came out and checked the bathroom and searched for his daughter but did not find her. Later, he has came to know that one Sumit Kumar who worked at AKM brick kiln and he alongwith his friend Rahul had enticed his daughter away on the pretext of marriage, on motorcycle number UP-11-Z-8086. His daughter should be searched and legal



action should be taken against Sumit and Rahul. On the basis of above said statement, FIR under Sections 363, 366-A, 120-B of IPC was lodged, however, later on, the offences under Sections 376 IPC and 6 of POCSO Act were added. Thereafter, the accused were arrested in this case. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that petitioner has been falsely implicated in the present case and he is behind the bars since 27.01.2022 and in spite of passing of more than 02 years 08 months, the prosecution has not been able to conclude its evidence and as such, the delay in concluding the trial has violated the fundamental rights of the petitioner enshrined under Article 21 of Constitution of India. Further, the victim has appeared before the learned trial Court as PW-2 and has turned hostile and her brother has deposed before the learned trial Court and he has also not supported the case of the prosecution and father of the prosecution, who was the complainant in the present case, has unfortunately passed away during the pendency of the trial.

4. Per contra, learned State counsel filed the custody certificate, which is taken on record and opposes the prayer made by learned counsel for the petitioner on the ground that there is sufficient material available on record to indicate the complicity of the petitioner and FSL Report is positive qua subjecting the prosecutrix to sexual assault. However, he could not controvert the fact that petitioner is not involved in any other case.

5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner is behind the bars since for 02 years 08 months and 03 days as on 01.10.2024 and out of total 23



has not even reached halfway mark. Culpability, if any, would be determined at the time of the trial. The petitioner is not involved in any other case.

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. In view of the above, the present petition is allowed and the petitioner-Sunil Kumar 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.

October 01, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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