



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

CRM-M-48214-2024 (O&M)
Date of decision: 01.10.2024

Shamsher

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mayur Karkra, Advocate for
Ms. Pooja Jaglan, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 of Cr.P.C. seeking regular bail in case bearing FIR No.355 dated 12.09.2023 under Section 376 (2)(n) of IPC and Section 6 of POCSO Act added later on registered at Matlauda, Panipat.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that she is 17 years old and on 10.01.2023, she has left the house with the accused/petitioner around 05:00 P.M. without intimating her family members. Thereafter, the accused/petitioner abducted her on the pretext of marriage but did not marry her and committed rape upon her and mentally tortured her and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner is a young boy of 23 years of age with clean antecedents and he has been falsely implicated in the present case. The allegation against the petitioner is that on 10.01.2023, he enticed away the prosecutrix without the consent of her parents and she was minor at that time. He further submits that on the basis



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of the incident that had taken place on 10.01.2023, one FIR No.14 dated 15.01.2023 was registered on the complaint made by the mother of the prosecutrix and after the investigation in the aforementioned FIR, the untraced report was prepared and submitted before the jurisdictional Court and it has been accepted and the FIR (*supra*) has been registered on the same set of allegations which is not permissible in law. Learned counsel for the petitioner relies upon the ratio of law laid down by the Hon'ble Supreme Court in 'TT Antony Vs. State of Kerala' 2001 (6) SCC 181 and he further relies upon the deposition of the prosecutrix before the learned Additional Sessions Judge, Panipat on 27.03.2024 and submits that the perusal of the statement clearly indicates that the prosecutrix resided with the petitioner for 06-07 months and during the entire period, she has not raised any alarm or made any complaint in case she was raped without her consent. The date of birth of the prosecutrix is yet to be proved and it would be a moot point to be decided by the learned trial Court whether the petitioner can be held liable for the offence as mentioned in the FIR (*supra*) or not. The petitioner is behind the bars since 14.09.2023.

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 the petitioner has enticed away the prosecutrix on the pretext of marriage and he continuously exploited her for 06-07 months and, thereafter, refused to marry her, as such, it is apparent that his intention to exploit the prosecutrix on the false pretext was from the very inception. 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*



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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 for 01 year 16 months as on 30.09.2024. 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 only 05 out of 14 prosecution witnesses have 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-Shamsher 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

01.10.2024

Neha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No