

**CRM-M-53096-2024 (O&M)****1****207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-53096-2024 (O&M)****Date of decision: 29.10.2024****NITISH KUMAR****...PETITIONER****V/S****STATE OF PUNJAB AND ANOTHER****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present:** Mr. Rajeev Duggal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

Mr. Puneet Thakur, Advocate
for respondent No. 2.**********HARPREET SINGH BRAR J. (ORAL)**

1. The petitioner is seeking grant of regular bail in case bearing FIR No. 94 dated 20.07.2024 registered under Sections 64(1) of Bhartiya Nyaya Sanhita, 2023 at Police Station Satnampura, District Kapurthala (Annexure P-1).

2. Brief facts of the case are that the complainant/victim moved a complaint alleging therein that she is student of BFA second year and on 17.07.2024 at about 10:00 p.m. she was returning to her P.G. law gate Maheru, PS Satnampura from her house at Jalandhar, she requested a boy present there to help her to go to her PG room as there were stray dogs in the street. He took her luggage bags and went with her upto the PG. The said boy disclosed his name as Nitish (petitioner herein). When she was about to enter her room, Nitish also entered into her room forcibly and tried to do forcible acts with her but she tried to stop him. Thereafter he forcibly gave her his phone number and went away. On 19.07.2024 at about 1:30 p.m. Nitish followed her and



requested her to give him a glass of water but when she went inside for water, he forcibly entered into the room and bolted the door and committed forcible acts with her. 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 petitioner and prosecutrix were in consensual relationship with each other and petitioner is a bright student and he has been awarded scholarship by the University. Petitioner is only 22 years of age and as such, the alleged incident cannot be presumed to have happened in the broad day light, in a P.G. where, several other students are residing. After registration of the FIR(supra), a compromise has been effected between the petitioner and the prosecutrix and she has already given her sworn affidavit on 14.10.2024, which is available on record as Annexure P-5 and learned counsel for the petitioner has relied upon a judgment of Hon'ble Supreme Court in ***Kapil Gupta Vs. State of N.C.T. of Delhi and another, 2022 (4) RCR (Crl.) 497*** and further relied upon a judgment of this Court in ***Karan Sharma Vs. State of Haryana and another, 2021(1) Law Herald 149*** and contends that once the parties have compromised the matter and decided to live in peace, no useful purpose will be served in allowing the criminal proceedings to continue.

4. Mr. Puneet Thakur, Advocate has put in appearance on behalf of complainant-respondent No. 2 and filed his power of attorney. Same is taken on record. Learned counsel for respondent No. 2 submits that compromise has been effected between the petitioner and respondent No. 2 and she has no objection if the present petition is allowed and petitioner is enlarged on regular bail.



5. 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 are serious and specific allegations against the petitioner and the prosecutrix has reiterated her allegations while appearing before the jurisdictional Court when her statement under Section 164 Cr.P.C. was recorded. However, he could not controvert the fact that petitioner is a student of 22 years of age and not involved in any other case.

6. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 21.07.2024 i.e. for 03 months and 08 days. Out of total 17 prosecution witnesses, none has been examined so far, thus, conclusion of trial will take sufficient long time to conclude. Culpability, if any, would be determined at the time of the trial.

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-Nitish Kumar is ordered to be released on regular bail, subject to his

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furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

8. 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 29, 2024
Ajay Goswami

(i) Whether speaking/reasoned
(ii) Whether reportable

(HARPREET SINGH BRAR)
JUDGE

Yes/No
Yes/No