

209-2

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) CRM-M-53170-2023
Date of decision: 11.01.2024

MukeshPetitioner

Versus

State of Haryana ...Respondent

2) CRM-M-55059-2023

BirenderPetitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manoj Tanwar, Advocate
for the petitioner (in CRM-M-53170-2023).

Mr. Aditya Sanghi, Advocate
for the petitioner (in CRM-M-55059-2023).

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

Both the above mentioned petitions have arisen out of the same
FIR, therefore, both are being heard together and decided vide common order,
however, the facts are borrowed from CRM-M-55059-2023.

The present petitions have been filed under Section 439 Cr.P.C.
seeking regular bail in case bearing FIR No.59 dated 06.03.2023 under Sections
370/342/344/506/34 of IPC registered at Police Station City Rewari, District
Rewari, Haryana (Annexure P-2).

Brief facts of the case are that on 06.03.2023, Inspector Anita, SHO, PS Women, Rewari, received information from SHO City that one girl was kept confined at Hotel JP Palace, Rewari, by the owner of the Hotel, namely, Naveen. On raiding the hotel, Naveen was found present along with the petitioner-Birender. The CCTV cameras of the hotel were got checked by the police party. Two girls hailing from Delhi were recovered from a room and five girls got recovered from another room who were confined therein. One girl aged 20 years gave statement to the effect that she has been studying in 11th Class and about six days ago, she along with her friends Varsha and Rohit had come to Murthal, Sonapat, where they stayed for two days in a hotel and from there, they went to Hisar and came in contact of Riya Sharma resident of Narela. After that the victim was taken to a hotel at Hisar, where, petitioner-Mukesh met her and told the victim and her friend to drop him at Delhi. On 05.03.2023, Mukesh brought the victim and her friend to Hotel JP Palace, Rewari where Naveen, owner of the hotel, met them. On next morning at about 11:00 A.M., Naveen came to their room and told them to go to another room. On asking the purpose, Naveen told that he had given Rs.10,000/- to Mukesh for getting wrong acts done and if she refuse, she would be killed and confined the victim and other girls to force them to indulge in wrong acts.

Learned counsel for the petitioner-Birender *inter alia* contends that Birender was working as an employee in the Hotel of Naveen and in the initial statement made by the complainant before the legal aid counsel, nothing has been alleged against Birender. Thereafter, when the complainant appeared before the concerned jurisdictional Magistrate, she made a statement under Sections 161 & 164 of Cr.P.C. and allegations were levelled against the

petitioner-Birender that he along with the main accused-Naveen had locked all the girls inside the hotel. He further submits that the petitioner is behind the bars since 07.03.2023 and is not involved in any other case. Moreover, the complainant has been examined as PW-1 and one more victim has been examined as PW-2, who have not supported the case of prosecution and have been declared hostile by the Public Prosecutor.

Learned counsel for the petitioner-Mukesh *inter alia* submits that only allegation against the petitioner-Mukesh was that he accompanied the complainant from Hisar to Rewari and, thereafter, he left the place. He is nowhere seen in the CCTV footage of the hotel.

Per contra the learned State counsel opposed the grant of regular bail to the petitioners on the ground that they are accused of heinous crime and nine girls have been found from the hotel of Naveen. He further submits that some of the witnesses are also to be examined, as such, the petitioners do not deserve the concession of regular bail.

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 perusing the record of the case, it transpires that the petitioner-Birender is behind the bars since 07.03.2023 and petitioner-Mukesh is behind the bars since 15.05.2023. 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 only 03 out of 26 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/petitioners. Keeping the petitioners in further detention without the prospect of the trial being concluded in the near future, would be violative of their rights under Article 21 of the Constitution of India.

Keeping in view the facts and circumstances of the case and the fact that the petitioners are not involved in any other case and the likelihood of trial being prolonged, the present petitions are allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioners-Birender and Mukesh are ordered to be released on regular bail during trial on their furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court/Duty Magistrate.

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

11.01.2024
Neha

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