

212

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-51818-2024 (O&M)
Date of decision: 24.10.2024

Arun Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

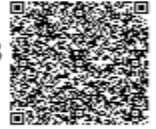
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Balraj Gujjar, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

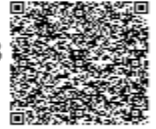
HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 483 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking regular bail in
case bearing FIR No.58 dated 24.02.2024 under Sections 376(2)(n) & 506 of
the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station
Sector-17, Kheripul, Faridabad, District Faridabad.
2. The present FIR was registered on the statement made by the
complainant-prosecutrix on the allegations that she has three children and is
living separately from her husband for the last 06 years. In the month of
Febrary/March, 2022, she started talking with the petitioner on Instagram and



on 01.11.2022, he called her to the room of his brother in Bharat Colony, Faridabad at about 07/07.30 p.m. and at that time, no one was present in the room and on the pretext of marriage, he forcibly committed wrong act with her. Thereafter, 2-3 times, he made forcible physical relations with her. The petitioner, by citing the problem to visit the room of his brother, said to the complainant-prosecutrix that he would stay in her house during night and thereafter, he used to go to her house during night. In the month of February, 2024, the petitioner demanded I-phone from her and after arranging the amount, she gave I-phone to him. On 21.02.2024, the petitioner quarreled with her and threatened to kill her if she made any complaint against him.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. There is a delay of 16 months in registration of FIR (*supra*), which remained unexplained and it creates a serious dent on the case set up by the prosecution. The prosecutrix is married and is a matured lady of more than 30 years of age and is having three children. As such, there was no occasion for the petitioner to entice her for sexual relationship on the pretext of marriage. In fact, the petitioner himself is a victim, as the complainant-prosecutrix is habitual of preparing fake IDs on social media and then she engages unknown men and thereafter, blackmails them. The petitioner is behind bars since 25.02.2024 and he is not involved in any other case and the investigating agency has completed the investigation and presented the final report under Section 173 of the Code of Criminal



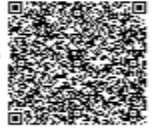
Procedure, 1973 (now Section 193 of BNSS), however, the charges are yet to be framed and the trial has not made any substantial progress.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that there are serious and specific allegations against the petitioner. He also took away mobile phone of the complainant-prosecutrix along with him. Learned State counsel produces the custody certificate dated 23.10.2024 of the petitioner in the Court today, which is taken on record. However, he could not controvert the fact that the petitioner is not involved in any other case.

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 in custody for the last 07 months and 29 days as on 23.10.2024 and conclusion of trial will take long time, as charges are yet to be framed. The culpability, if any, would be determined at the time of trial. 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.

6. A two Judge Bench of the Hon'ble Supreme Court in ***Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed as under: -

“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, present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner Arun Kumar is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned trial Court shall proceed without being prejudiced by the observations of this Court.

24.10.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No