

2024:PHHC:141306



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

CRM-M-52768-2024

Date of Decision: 28.10.2024

Sandeep Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Navneet Singh, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.07 dated 10.01.2024 under Sections 376/506/120-B of IPC (Section 384 of IPC was added later on) registered at Police Station Ismailabad, District Kurukshetra (Annexure P-1).

2. The brief facts of the prosecution case are that on 10.01.2024 complainant moved a complaint alleging that he is working as a contractual labour. He has collected Rs.4,50,000/- at his house after selling his cattle and from other sources. On 27.12.2023, he found the money missing and thought that same has been stolen. When he made inquiries and also asked his daughter, then she told him that Rani Devi wife of Sher Singh has allured her with her sweet talks. She introduced her to Sandeep Kumar (petitioner) son of Jaspal and got her physically abused from him. They enticed her on the pretext of solemnizing marriage and took the amount after threatening her. They threatened her that if she will disclose about this fact to anybody then they will get her killed. His daughter is disabled and she was being blackmailed after extending threats. On the basis of this complaint, First Information Report under Sections 120-B, 376 and 506 IPC

was registered. Investigation began. During the investigation, rough site plan of place of occurrence was prepared. The statements of the witnesses were recorded. The complainant produced the birth certificate of the victim-prosecutrix. The statement of victim-prosecutrix under Section 164 Cr.P.C. was got recorded. Her birth certificate was got verified. The medico legal examination of the victim-prosecutrix was got conducted and her samples were taken into police possession.

3. Learned counsel for the petitioner *inter alia* contends that FIR in question was registered after an unexplained delay of 16 days, which puts dent on the whole story of the prosecution. There is no medico-legal evidence to corroborate the case set up by the prosecution. Further the main witnesses i.e. the complainant (PW3) and victim (PW2), have already been examined by the learned trial Court where few inconsistencies have been found and also there is a lot of contradictions in their depositions. Learned counsel for the petitioner has placed reliance upon the statements of complainant and victim (Annexure P-3 and P-4), respectively. Further co-accused Rani @ Rani Devi has already been granted concession of regular bail by this Court vide order dated 01.07.2024 passed in CRM-M-24095-2024 (Annexure P-5). He further submits that the petitioner is in custody since 11.04.2024.

4. *Per contra*, learned State counsel produces the custody certificate, which is taken on record and opposes the prayer of the petitioner on the ground that petitioner is the main accused and the material prosecution witnesses have also supported the case of the prosecution and reiterated the same allegations. He further submits that the petitioner is a habitual offender. He is involved in 3 other more cases.

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 behind the bars since 11.04.2024 and has undergone a period of 06 months and 17

days as on 27.10.2024. The investigating agency has already concluded the investigation and has submitted the final report under Section 173 Cr.P.C. The trial of the case is likely to take long time as out of 22 witnesses cited by the prosecution, only 02 witnesses have been examined so far. Further incarceration of the petitioner, without there being the prospect of the conclusion of the trial, in the near future, would be violative of his rights under Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

6. 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 ratio of law laid down by Hon'ble Supreme Court in **Prabhakar Tiwari Vs. State of UP and Anr.** 2020(1) RCR (Criminal) 831 and **Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others** 2012(2) SCC 382, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

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

9. Nothing observed hereinabove shall be construed to be an expression of opinion by this Court lest it may prejudice the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

28.10.2024
Parveen kumar

(HARPREET SINGH BRAR)
JUDGE

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