



CRM-M-52727-2024
Date of Decision: 28.10.2024

Versus

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This is the first petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS) for grant of regular bail to the petitioner in case bearing FIR No.53 dated 12.06.2024 under Sections 363/366-A/120-B of IPC, 1860 registered at Police Station Sadar Patti, District Taran Taran (Annexure P-1).

2. The present FIR was registered on the statement of complainant Jagroop Singh. In his statement recorded, he stated that he is a labourer and having six children. His daughter/prosecutrix 'R Kaur' (name not disclosed) is aged about 17 years and has passed 12th class from Girls Government Sr. Sec. School Ghariyala and is now working at house only. Kuldeep Kaur w/o Bagicha Singh r/o Garyala is his neighbourer. Nishan Singh (petitioner) is nephew of Kuldeep Kaur and stayed with Kuldeep Kaur for a long time and Nishan Singh (petitioner) used to keep a bad eye on his daughter/prosecutrix. Kuldeep Kaur and his son Jatinder Singh knew this fact. He talked about the

same with Kuldeep Kaur and Nishan Singh but Nishan Singh (petitioner) did not mend his ways and he used to insist on marrying R Kaur and used to say that if her father failed to do so, he would entice away his daughter. On 03.06.2024, at night, after taking the dinner, all the family members went to sleep. On 04.06.2024 at about 3:00 AM, when he woke up, he saw that his daughter R. Kaur was missing. He was sure that Nishan Singh (petitioner) had enticed away his daughter/prosecutrix on the pretext of marrying her. In this act, Kuldeep Kaur and her son Jatinder Singh also helped him. On the basis of this statement suffered by complainant, the present FIR was registered against the petitioner.

3. Learned counsel for the petitioner *inter alia* contends that the alleged incident has taken place on 04.06.2024, however, FIR in question was registered on 12.06.2024 after an inordinate unexplained delay of 08 days which raises serious concerns about the veracity of the allegations made in the FIR. He further submits that the prosecutrix has been produced before the trial Court and her statement under Section 164 Cr.PC was recorded and the prosecutrix has not levelled any allegations against the petitioner. However, she has refused to get herself medically examined. The final report in the present case has already been filed. Learned counsel for the petitioner has placed reliance upon order dated 04.10.2024 (Annexure P-2) passed by the learned trial Court and submits that prosecution witnesses are intentionally not deposing before the learned trial Court and theirailable warrants have been issued and the proximity between the petitioner and the prosecutrix requires a lenient view. He further submits that the petitioner is not involved in any other case.

4. *Per contra*, learned State counsel produces the custody certificate

of the petitioner, which is taken on record and opposes the prayer of the petitioner on the ground that petitioner is the main accused, who has enticed away the minor daughter of the complainant. 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 behind the bars since 14.06.2024 and has undergone a period of 04 months and 13 days as on 27.10.2024 and is not involved in any other case. 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 14 witnesses cited by the prosecution, none has 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 above, the present petition is allowed and the petitioner-Nishan Singh @ Lovepreet 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.

8. 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