



CRM-M-54641-2024 (O&M)

1

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

CRM-M-54641-2024 (O&M)

Date of decision: 08.11.2024

TUSHAR

...PETITIONER

V/S

STATE OF UNION TERRITORY, CHANDIGARH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRARPresent: Mr. Dharam Bir Bhargav and Mr. Kulwinder Bhargav, Advocates
for the petitioner.Mr. Manish Bansal, PP UT Chandigarh with
Ms. Diksha Sharma, Advocate for UT Chandigarh.

HARPREET SINGH BRAR J. (ORAL)

1. The petitioner is seeking grant of regular bail in case bearing FIR No. 36 dated 23.02.2023 registered under Section 363 of Indian Penal Code (Sections 366, 376(3) of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 were added later on) at Police Station West Sector 11, Chandigarh.

2. FIR(supra) was registered on the statement of complainant Ashwani on the allegations that his daughter Neha aged 13 years had gone to somewhere from the house on 15.02.2023, without informing him. He tried to trace her at his own level but could not find her. Thus, it was requested that his daughter Neha be searched.

3. Learned counsel for the petitioner *inter alia* contends that initially the FIR(supra) was registered on account of missing complaint of daughter of complainant. Thereafter, petitioner along with the prosecutrix were apprehended at Kalka by the Police and offence under Section 376(3) and Section 6 of Protection of Children from Sexual Offences Act, 2012 were added. Learned counsel further contends that the petitioner as well as the



prosecutrix were in consensual relationship as both of them were in love with each other. Further the alleged incident had taken place on 15.02.2023, however, the FIR(supra) was registered on 23.02.2023, i.e. after a delay of 08 days. Learned counsel further submits that the prosecutrix, in her statement under Section 164 of Cr.P.C., recorded before the trial Court, has clearly stated that she intended to marry with the petitioner and she went with him on her own violation and further when she has been examined by the trial Court, she has not supported the case of the prosecution and the petitioner is behind the bars for more than one year and eight months.

4. Per contra, learned PP UT Chandigarh filed the custody certificate, which is taken on record and opposes the prayer made by learned counsel for the petitioner on the ground that the victim-prosecutrix was minor at the time of alleged incident and she became pregnant and her abortion was done in PGIMER Chandigarh and scientific report proves the complicity of the petitioner.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 27.02.2023 i.e. for 01 year 08 months and 13 days as on 08.11.2024. Out of total 27 prosecution witnesses, only 15 have 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.

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 demo cracy, 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 and without commenting upon the merits of the case, the present petition is allowed and the petitioner-Tushar is ordered to be released on regular bail, subject to his 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.

November 08, 2024

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No