

**CRM-M-55058-2024 (O&M)****1****210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-55058-2024 (O&M)****Date of decision: 11.11.2024****PARMOD****...PETITIONER****V/S****STATE OF HARYANA AND ANOTHER****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present:** Mr. Anshumaan Dalal, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

**********HARPREET SINGH BRAR J. (ORAL)**

1. The petitioner is seeking grant of regular bail in case bearing FIR No. 201 dated 24.05.2023 registered under Sections 341, 376, 452, 506 of Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act, 2012 at Police Station Old Sabzi Mandi, Rohtak, District Rohtak but the petitioner was charge sheeted under Sections 341, 354-A, 452, 376(3), 376(2)(n) and 506 of Indian Penal Code and Sections 6 and 8 of Protection of Children from Sexual Offences Act, 2012 by learned trial Court vide charge sheet dated 29.07.2023.

2. Brief facts of the case of prosecution case are that on 24.05.2023, the complainant/victim girl 'T' came to the police station and handed over an application with allegations that "she was 16 years old and was residing in an area of District Rohtak. She had passed matric class from Arya High School. Her parents were labourers. One Parmod (petitioner herein) was residing in their neighbourhood. About one year ago, her mother had borrowed Rs.5000/- from him and because of this, he used to visit their house. He also used to talk with her during such visit. On 05.06.2022, her parents as well as her younger



sister and brother had gone to their native village in Uttar Pradesh to attend some marriage while she and her other sister 'Kh' were home. On 16.06.2022, there was Jagran of Khatu Shyam in Old Sabzi Mandi. During the same night, at about 2.30 A.M., Parmod entered their house from the roof and, by threatening her, he forcibly took her to the roof and developed physical relations with her by force. He also clicked her nude photos on his mobile phone and threatened that if she disclosed about this to anyone, he would kill her. Out of fear, she did not narrate the incident to anyone. On 13.05.2023, he intercepted her way near Madhu Kulfi Wala in Kewal Ganj and demanded that either she marry him or else he would make viral her nude photos. Then, she disclosed everything to her mother.". On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that petitioner has been falsely implicated in the present case and there is a delay of more than a year in registration of the FIR(supra) and further no credible evidence has been procured by the Investigating Agency to establish that the prosecutrix was minor at the time of alleged incident. The petitioner is behind the bars since 26.05.2023 and he is not involved in any other case. Material witnesses have already been examined. Further the prosecutrix has alleged in her statement recorded under Section 164 Cr.P.C. that the petitioner was compelling her to marry him. It is further contended that without first proving the date of birth of the prosecutrix, the presumption under Section 29 of Protection of Children from Sexual Offences Act, 2012 cannot be fastened upon the petitioner.

4. Per contra, learned State counsel 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 petitioner is the main accused and there are serious and specific allegations levelled against him and he has sexually exploited the prosecutrix twice and he was threatening the prosecutrix to perform marriage with her. However, he could not controvert the fact that petitioner is not involved in any other case.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 26.05.2023 i.e. for 01 year 05 months and 13 days as on 08.11.2024. Out of total 20 prosecution witnesses, only 11 have been examined so far, thus, conclusion of trial will take sufficient long time. 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 and without commenting upon the merits of the case, the present petition is allowed and the petitioner-Parmod 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 11, 2024

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

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