



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

CRM-M-55161-2024

Date of decision: 12.11.2024

Ashish

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Singh Majithia, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 483 of Bharatiya
Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR
No.1004 dated 30.11.2023 (Annexure P-1) under Sections 365/506 of IPC and
Section 4 of POCSO Act, registered at Police Station Sadar, District Karnal.

The FIR (*supra*) was lodged on the statement of the complainant
by alleging that on 29.11.2023 at around 02:00 P.M., her daughter went
somewhere without informing anybody in the family and as per the version of
the prosecutrix herself, on the same day, she left the house on her own and went
to Chandigarh and because she was not having any ID, she came back and
called her friend Ashish (the petitioner herein). Thereafter, the
accused/petitioner picked her up from bus stand and dropped her at KCGMC in
the night. On next morning, he again met the prosecutrix and sat in a park for
some time with her. Thereafter, they went to a room and developed physical
relations with the consent of the prosecutrix. Then, the prosecutrix went to
Delhi and called one, Neeraj but he could not make any arrangement for her



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stay and therefore, the prosecutrix stayed at Delhi bus stand during that night and next day she came back and talked to the accused/petitioner and another person who works at Kashmir Silk Store and they arranged a room for her in a hotel. On 06.12.2023, she again went to her friend at Delhi and on 10.12.2023, she went to her sister at Gharaunda and alleged that she does not want to live with her family members.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and the case set up by the prosecution is too far fetched and implausible. The statement of the victim/prosecutrix was recorded under Section 164 Cr.P.C. and she has made no allegation with regard to rape against the petitioner. There is no medical or scientific evidence on record to indicate the complicity of the petitioner rather, nothing suggestive of forcible sexual assault has been found in the medical examination. He further submits that the relationship between the petitioner and the prosecutrix was purely consensual in nature. Further, the date of birth of the prosecutrix has not been proved in accordance with law. He further submits that the petitioner is behind the bars since 17.12.2023 and the investigation is completed.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that the victim/prosecutrix was a minor girl and she was subjected to penetrative sexual assault by the petitioner and thus, the petitioner does not entitle to any relief.

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.”

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 17.12.2023 Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as out of 11 prosecution witnesses, none has been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. 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.

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In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Ashish 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.

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.

(HARPREET SINGH BRAR)
JUDGE

12.11.2024*Neha*

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