



208

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

CRM-M-57147-2024

Date of decision: 22.11.2024

Raj Kishore

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Rupender Singh Rana, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 of Cr.P.C. seeking regular bail in case bearing FIR No.149 dated 21.10.2023 under Sections 376/506/448 of IPC registered at Police Station Lalru, District S.A.S. Nagar.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 20.10.2023, her mother went to the factory for her duty and her father had gone to Delhi for some work. After coming back to home from school at about 03:00 P.M., her two younger brothers went out of the house to play and she was washing clothes at her house. Thereafter, at around 03:30 P.M., her father's friend, namely, Raj Kishore (the petitioner herein), came to her house when she was alone there and he took her forcibly inside a room of her house. She got scared and started crying for help but the accused/petitioner covered her mouth with his hand and threw her on the bed and committed rape upon her against her wishes. Thereafter, the accused/petitioner extended threats



CRM-M-57147-2024

-2-

to kill her and her family if she would disclose about the incident to anyone and thereafter, ran away from the spot and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case due to the previous enmity between the families of the petitioner and the complainant and this fact has been duly admitted by the complainant in her cross-examination. Further, during the medical examination of the prosecutrix, nothing suggestive of sexual assault has been detected. The petitioner is behind the bars since 21.10.2023 and more than one year has passed, the prosecution has failed to conclude its evidence and the material witnesses have already been examined.

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 there are serious and specific allegations against the petitioner and the complainant/prosecutrix has duly supported the case of the prosecution and reiterated the allegations against the petitioner. However, he could not controvert the fact that the petitioner is behind the bars for the last one year and he is not involved in any other case.

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 21.10.2023.. 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 only 07 out of 13 prosecution witnesses have 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.

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-Raj Kishore 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

22.11.2024
Neha

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