

CRM-M-57684-2024 (O&M)

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212 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-57684-2024 (O&M)

Date of Decision: 25.11.2024

VIVEK

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

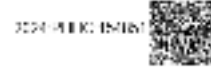
Present: Ms. Pooja Jaglan, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

Harpreet Singh Brar J.(Oral)

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in case bearing FIR No. 316 dated 23.05.2024 registered under Sections 323, 376, 506 and 511 of Indian Penal Code (Section 323 of IPC deleted and Section 354 of IPC added later on) and Sections 4 and 18 of Protection of Children from Sexual Offences Act, 2012 (Section 10 of POCSO Act deleted later on) at Police Station Chandni Bagh, Panipat.

2. Briefly, it is the case of the prosecution that on 23.05.2024, complainant/mother of victim girl came present in Police Station and moved a complaint to the effect that on the same day i.e. 23.05.2024 at about 5:00 a.m., they all sleeping on the roof. Her daughter, aged 13 years was lying on the cot. Vivek (petitioner herein), a worker from the biscuit factory, came to the terrace and started opening the string of the *salwar* of her daughter. He put his hand on her daughter and said if she told anyone, he would kill her and her family. Meanwhile, she woke up and



Vivek ran away from there. She requested to take legal action against him. On the basis of complaint, FIR in the present case was registered.

3. Learned counsel for the petitioner *inter alia* contends that perusal of the case set up by the prosecution indicates that complainant and prosecutrix were sleeping on the same cot and complainant found that the petitioner was trying to open the string of the *salwar* of the prosecutrix and then the petitioner is alleged to have fled away from the spot. The initial version was improved by the prosecutrix in her statement recorded under Section 164 Cr.P.C., wherein she stated that the petitioner after opening the string of her under garment, had touched her private parts and the said facts were not mentioned in the FIR(supra), in spite of the fact that complainant was the eye-witness of the alleged occurrence. Thus, the necessary ingredients breaking the threshold of Section 4 of Protection of Children from Sexual Offences Act, 2012 are missing. Learned counsel further argued that the petitioner is a young boy of 22 years of age and he is not involved in any other case and he has been implicated in the present case with the aid of Section 511 of Indian Penal Code. The investigation of the case is complete and final report has already been submitted before the jurisdictional Court.

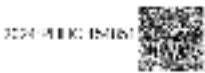
4. The learned State counsel has filed custody certificate in the Court today which is taken on record and *per contra*, opposes the grant of regular bail to the petitioner on the ground that there are serious and specific allegations levelled against the petitioner as he tried to commit rape upon the minor daughter of the complainant.

5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner is behind the bars since 24.05.2024 i.e. for a period of 05 months and 29 days as on 22.11.2024 and out of total 14 prosecution witnesses, none has been examined so far, therefore, the conclusion of trial is likely to take considerable long time. Culpability, if any, would be determined at the time of the trial. The petitioner 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."

6. In view of the above, the present petition is allowed and the petitioner-Vivek is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.



7. 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

25.11.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No