

212

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-59653-2024 (O&M)
Date of decision: 04.12.2024

Sandeep

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikram Rana, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 483 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking regular bail in
case bearing FIR No.182 dated 19.06.2024 under Sections 10, 17, 4, & 8 of
the Protection of Children from Sexual Offences Act, 2012 and Sections 354,
354-D, 363, 366-A, 376(3), 509, 34 of the Indian Penal Code, 1860 (for short
'IPC'), registered at Police Station Bawani Khera, District Bhiwani.



2. The present FIR was registered on the statement of mother of the prosecutrix, on the allegations that her daughter Komal, whose age is 14 years, fair complexion, height four and a half feet, wearing a pocket lower blue color with long sleeves T-shirt, missed at 12 o'clock in the night, taking an amount of Rs.80,000/- of the complainant and they had full doubt that Jinu son of Shri Madan Badgujar had enticed away her.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. The main accused, as per the case set up by the prosecution, is co-accused Anil @ Jinu, who is alleged to have enticed away daughter of the complainant and on 20.06.2024, the prosecutrix was traced in Poshan. Further, the only allegation against the petitioner is that he along with co-accused Anil and Sandeep has misbehaved with the prosecutrix. Furthermore, no sign of any external or internal injury, swelling or tenderness, bleeding was detected during the physical examination and even during her medical examination, no allegation has been levelled against the petitioner, when she reported the history of the case. Even the opinion with regard to sexual assault has been withheld, awaiting the report of forensic examination. It is further contended that identically situated co-accused Parduman has already been granted the concession of regular bail by this Court vide order dated 14.11.2024 passed in CRM-M-55979-2024. The



investigation of the case is complete and the petitioner is behind bars since 23.06.2024 and he is not involved in any other case.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner along with co-accused Sandeep misbehaved with the prosecutrix and they were present along with main accused Anil. Learned State counsel produces the custody certificate dated 03.12.2024 of the petitioner in the Court today, which is taken on record. However, he could not controvert the fact that the petitioner is not involved in any other case.

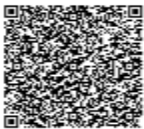
5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind bars for the last 05 months and 11 days as on 03.12.2024 and he is not involved in any other case; the investigating agency has already concluded the investigation and presented the final report under Section 173 of the Code of Criminal Procedure, 1973 (*now Section 193 of BNSS*) and trial of the case is likely to take long time in its conclusion, as only 03 out of 19 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. 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.



6. A two Judge Bench of the Hon'ble Supreme Court in ***Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed as under: -

“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, present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner Sandeep is ordered to be released on regular bail during



trial on his furnishing bail/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned trial Court shall proceed without being prejudiced by the observations of this Court.

04.12.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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