



209

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

CRM-M-59930-2024

Date of decision: 05.12.2024

Nikhil

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Sukesh Kumar Jindal, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 483 of BNSS, seeking regular bail in case bearing FIR No.476 dated 01.08.2023 under Sections 376/506 of IPC and Section 6 of POCSO Act registered at Police Station Old Industrial, Panipat, however challan was filed against the petitioner under Sections 376/506 IPC, Section 6 POCSO and Section 66E of IT Act.

The FIR (*supra*) was registered on the statement of the complainant by alleging that on 29.07.2023, her elder daughter/victim who was aged 16 years (at the time of incident) left the home and when she came back, she told the complainant that she went to Karnal with the accused/petitioner who took her to Hotel Bhardwaj and committed wrong act with her. It is further alleged that the accused/petitioner also extended threats to kill her and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner and the prosecutrix were in a consensual relationship and when the parents of the prosecutrix learnt about the same, they got the FIR (*supra*)

registered against the petitioner. The petitioner is behind the bars since



CRM-M-59930-2024

-2-

10.08.2023 and the proximity between the age of the petitioner and the prosecutrix requires a lenient view. He further submits that the petitioner is not involved in any other case and only 09 prosecution witnesses have already been examined till date and delay in the conclusion of the trial infringes the right of the petitioner under Article 21 of the Constitution of India.

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 specific and serious allegations against the petitioner of committing rape upon the prosecutrix and the prosecutrix was examined as PW-1 and her mother was examined as PW-2 and both of them have supported the case of the prosecution. However, he could not controvert the fact that 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.”



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 10.08.2023. 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 09 out of 18 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-Nikhil 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

05.12.2024
Neha

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