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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARHCRM-M-9346-2025 (O&M)
Date of Decision: 21.02.2025

AJAY

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Harjinder Singh, Advocate and
Mr. Paras Khindri, Advocate for the petitioner.

Mr. Nitesh Sharma, DAG Punjab.

Harpreet Singh Brar, J. (Oral)

1. This is the second petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking grant of regular bail to the petitioner in case bearing FIR No. 278 dated 20.09.2023 registered under Sections 363, 377 of Indian Penal Code and Sections 06 and 17 of Protection of Children from Sexual Offences Act, 2012 at Police Station Rama Mandi, Jalandhar, District Jalandhar.

2. FIR(supra) was registered on the statement of Narinder Kaur wife of Rakesh Kumar who stated that she was working as a house hold lady. She is having four children and the elder one is Jaskaran Singh, younger to him is her daughter Kannu, younger to her is Taniya and youngest one is Kunal @ Kalu aged about 13 years. On 19.09.2023, her younger son Kunal @ Kalu had gone to the fair in the evening at about 08:00 PM at Dakoha alongwith his friend Yadwinder then after one and half hour Yadwinder came to her and told that when he and his son Kunal were coming back from the fair, then three persons

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came there on motorcycle and with wrong intention forcefully tried to took us alongwith them. However, he escaped from their clutches and they took away Kunal @ Kalu alongwith them with a bad intention and escaped somewhere on their motorcycle and complainant further said that her son Kunal @ Kalu has not returned home till then. She was fully assured that these three persons had kidnapped her son Kunal @ Kalu with a bad intention on their motorcycle. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner submits that this is the second petition seeking grant of regular bail to the petitioner and first one was dismissed as withdrawn on 23.04.2024. Learned counsel further *inter alia* contends that the alleged incident had taken place on 19.09.2023, whereas the FIR was registered on 20.09.2023 and the medical evidence does not match with the case set up by the prosecution. Learned counsel further submits that PW-2 has not supported the case of the prosecution and has stated that no occurrence as alleged by the prosecution has ever occurred. Moreover, victim, who has already deposed before the learned trial Court as PW-6 and his deposition is available on record as Annexure P-5, submitted that the petitioner has not committed any offence. Learned counsel further submits that petitioner is behind the bars since 20.09.2023.

4. *Per contra*, learned State counsel opposes the grant of regular bail to the petitioner on the ground that victim while getting his statement recorded under Section 164 Cr.P.C. has levelled specific allegations against the petitioner. However, he could not controvert the fact that petitioner is not involved in any other case.

5. Having heard learned counsel for the parties and after perusing the



behind the bars for a period of 06 months. The investigating agency has already concluded the investigation and has submitted the final report under Section 173 Cr.P.C. Trial of the case is likely to take long time to conclude. Further, the culpability, if any, would be determined at the time of final disposal of the case and as such, no useful purpose will be served by further detention of the petitioner-accused.

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 under-trial 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.”

7. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner-Ajay 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.



8. Nothing observed hereinabove shall be construed to be expression of an opinion by this Court on merits of the case. The learned Court below is directed to proceed with the matter on its own merits, lest it may prejudice the trial.

(HARPREET SINGH BRAR)
JUDGE

21.02.2025
Ajay Goswami

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