

**IN THE COURT OF SH. HARJEET SINGH JASPAL:
ACMM-04, ROUSE AVENUE DISTRICT COURTS, NEW DELHI**

**CNR No.DLCT12-000093-2023
Cr. Case No. 06/2023**

**U/s 354/354A/354D/506(1) IPC
FIR No. 78/2023
PS- Connaught Place
State Vs. Brij Bhushan Singh & Anr.**

20.07.2023

ORDER

1. Vide this order, I shall decide the application of applicant/accused persons, (hereinafter as the accused persons) for grant of regular bail.
2. To begin with, it is pertinent to mention that the accused persons are on interim bail, vide order dated 18.07.2023.
3. The police report alleges that the accused persons have committed offences u/s 354/354A/354D/506 IPC etc. The allegations pertain to various incidents of sexual harassment, spread over a period of about ten years, at various places, in and outside of India.
4. At length arguments were heard. Ld. Defence Counsel has pleaded that the accused persons be given benefit of bail keeping in mind the fact that the chargesheet has been filed without arrest and the

accused persons have themselves put in appearance before the court upon receiving summons.

5. As per the Ld. Defence Counsel, the accused persons have deep roots in the society and both of them are ready and willing to furnish sound sureties. Ld. Defence Counsel also undertakes to ensure the presence of the accused persons before the court during the pendency of the trial.

6. Inter alia, the defence has pleaded on following grounds:

a) accused persons are innocent;

b) no arrest has been made by the Investigating Agency and therefore at this stage, no purpose will be served by taking the accused persons in custody;

c) the law itself mandates that whenever the accused has not been arrested and the chargesheet has been filed without arrest, he ought to be granted bail;

d) the accused persons have cooperated with investigation;

e) accused no.1 is a Member of Parliament and his custody would be impediment in discharge of his functions as chosen representative of the public;

f) the accused persons undertake not to tamper any evidence or to approach any victim/witnesses, directly or indirectly;

g) accused persons are ready and willing to accept any condition imposed by this court.

7. The defence counsel has placed on record the following

judgments in support of his arguments:

a) Satender Kumar Antil vs CBI (MA 1849/2021 in SLP(Crl No. 5191/2021)

b) Court on its own motion vs CBI (2004(72)DRJ 629)

c) Rana Kapoor vs Directorate of Enforcement (Bail appln. 559/2022)

d) Lt. Gen. Tejinder Singh vs CBI (Bail appln. 1946/2014)

8. Ld. Additional Public Prosecutor submits that the accused be dealt as per law and he has placed on record the judgment of the Hon'ble Supreme Court in **Satender Kumar Antil vs. CBI**. It is prayed further that if bail is granted, conditions be imposed that the accused persons shall not induce the victims/witnesses.

9. Ld. Counsel for the complainants has opposed the bail on the ground that the accused persons are influential people and the possibility of inducement to witnesses and threat to the victims cannot be ruled out.

10. I have heard the submissions and have perused the record. The judgments cited by both the sides have been duly considered.

11. It is settled law, as has been laid and abundantly reiterated by the Hon'ble higher courts in many judicial pronouncements that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail.

12. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon.

13. The Hon'ble Supreme Court in **Sanjay Chandra vs. CBI (Criminal Appeal No. 2178 OF 2011) (Arising out of SLP (Crl.) No. 5650 of 2011)** observed that the courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. The apex court further opined that in this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the

purpose of giving him a taste of imprisonment as a lesson.

14. Furthermore, I deem appropriate to refer to the guidelines issued by Hon'ble Justice JD Kapoor, High Court of Delhi in matter titled as **Court on its own motion vs CBI, 2004(72) DRJ 629**. The Hon'ble Delhi High Court observed as under:

“The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in [Section 170, Cr.P.C.](#) call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail.”

15. Similarly, in judgment titled as **Satender Kumar Antil vs. CBI (2022) 10 SCC 51**, the Hon'ble Supreme Court has voraciously advocated the cause of personal liberty and has directed the subordinate courts to follow the already laid guidelines in terms of bail. It has been highlighted therein whenever the accused has not been arrested during investigation and has cooperated in investigation, consequently resulting

into the chargesheet being filed without arrest, it is not mandatory for the trial court to take the accused in custody and the bail ought to be decided on merits. The observation of the Hon'ble Supreme Court in **Siddarth vs State of UP (2022)1SCC 676** also provide guiding directions on similar lines.

16. Coming to the matter at hand, the allegations against the accused persons are *inter alia* that of molestation/sexual assault, the cognizance has been taken for offences u/s 354/354A/354D/506/109 IPC. The said sections are all punishable with imprisonment of not more than 07 years, the accused persons have not been arrested during the investigation and as per the police report, the accused persons have cooperated in the investigation. These facts taken in totality indicate that the matter at hand shall fall in category A of the classification provided by the Hon'ble Supreme Court in **Satender Kumar Antil (Supra)** and ought to be dealt accordingly.

17. At no stage, the Investigating Agency, speaking through the Ld. Additional Public Prosecutor, has expressed its apprehension that the accused persons are abusing their positions or are making attempts to tamper evidence. What has been conveyed is that sufficient conditions must be imposed to the extent that the accused persons do not, directly or indirectly, approach the victims so as to influence them. The Additional Public Prosecutor has not even opposed the bail, his simple submission is that it must be decided in accordance with directions of the Hon'ble Supreme Court in **Satender Kumar Antil (Supra)**. Ld.

Counsel for the complainants, upon being asked, has not placed on record any specific instance where the victims were threatened. However, he has expressed his apprehension that the accused persons may approach the victims and may try to influence them in future, however the present entails no such detail.

18. The law of the land is equal for all, it can neither be pulled in the favour of the victims nor can it tilt in the favour of the accused persons. The observations of the Delhi High Court in **Court on its own motion vs CBI (Supra)** are again reiterated to say that where the accused has not been arrested during investigation and he appears before the court upon summons, these circumstances are in itself sufficient for the accused to be released on bail. The contextually relevant portion is quoted hereunder:

“The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in [Section 170, Cr.P.C.](#) call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail.”

19. In the instant case, the allegations are serious. In my view, the seriousness of the allegations, no doubt, is one of the relevant considerations while considering bail applications but it is not the only test or the factor to decide the same. When the undertrial prisoners are detained in jail to an indefinite period, Article 21 of the Constitution is violated. Reliance is placed on observations of the Hon'ble Supreme Court in **Sanjay Chandra (Supra)**. In the matter at hand, in my considered opinion, at this stage, no purpose will be served by taking the accused persons in custody, at this stage.

20. Ergo, in the light of the aforementioned discussion, the mandate of the Hon'ble higher courts in **Satender Kumar Antil (Supra)**, **Sanjay Chandra (Supra)**, **Court on its own motion vs CBI (Supra)**, the submissions made by Ld. Additional Public Prosecutor and undertaking given on behalf of the defence, this court deems appropriate to grant the benefit of bail to both the accused persons, upon following conditions:

a) the accused persons shall not tamper with any evidence, nor shall they make any threat/inducement/promise to any victim or any other witnesses in any manner whatsoever;

b) the accused persons shall attend the court whenever called;

c) the accused persons shall not commit any similar crimes, of which they are suspected;

d) the accused persons shall not leave the country without the prior permission of the court;

e) the accused persons shall furnish a bond of Rs. 25,000/- each, with one surety in like amount.

**Announced in open court
on 20.07.2023**

**(Harjeet Singh Jaspal)
ACMM-04/RADC/New Delhi**