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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-5084-2024 (O&M)
Date of decision: 09.08.2024

Sukhdev Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Ms. Neha Jain, Advocate (legal aid counsel)
for respondent No.2.

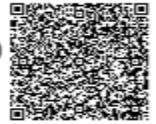
HARPREET SINGH BRAR, J. (ORAL)

CRM-31582-2024

1. Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for placing on record Annexures P-7 & P-8 and also for exemption from filing true typed copies thereof.

2. In view of the averments made in the application, same is

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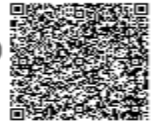
allowed. Annexures P-7 & P-8 are taken on record, subject to all just exceptions and exemption sought is granted.

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3. The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.168 dated 12.11.2022 under Sections 498-A, 376, 354, 420 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 6 & 8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), registered at Police Station Shri Hargobindpur, Police District Batala, District Gurdaspur.

4. The present FIR was registered on the basis of a complaint moved by the complainant 'B', on the allegations that on the pretext of marriage, the petitioner enticed her and took the complainant along with her daughter to his village and she handed over all her money to him, from which, the petitioner purchased a house in his name. Thereafter, the petitioner performed marriage with her and relationship between them was cordial, but after six months, the petitioner started beating her and her daughter after consuming alcohol and even he tried to establish physical relations with her daughter. When the complainant was pregnant, the petitioner beaten her up and forced her to miscarriage and demanded money from her. The petitioner administered some intoxicant substance in the vegetables in order to kill her. He also tried to kill her so that he could have physical relations with her daughter.

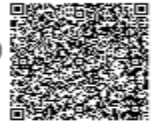
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5. Learned counsel for the petitioner, *inter alia*, contends that the dispute between the petitioner and his wife arose on account of payment of loan installment. The complainant, when came to know that loan installment has become irregular and the petitioner encashed the fixed deposit in the name of her daughter Manpreet Kaur, the relationship between them became very sour and on account of matrimonial dispute, she levelled the allegations with regard to offence under Section 354 of IPC and Section 8 of POCSO Act. The transactions with regard to loan installment have been verified by the investigating agency during the investigation. Further, at the time of submitting the final report under Section 173 Cr.P.C., record regarding date of birth of daughter of the complainant was obtained and it was found from the record available in her school that she was major at the time of alleged incident, as such, provisions of POCSO Act cannot be invoked. The petitioner is inside for the last about 01 year and 08 months. It is further contended that daughter of the complainant refused to get her medical examination conducted, as such, there is no corroboration to the case set up by the prosecution and just to aggravate the offence, without any tangible material qua the allegations, offences under Section 376 of IPC and Section 6 of POCSO Act are added.

6. *Per contra*, learned State counsel, assisted by learned counsel for respondent No.2-complainant, opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner, after consuming liquor, has

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been trying to ravish her step-daughter, to which the complainant objected and in spite of this, he did not resist from exploiting the step-daughter. It is further submitted that the prosecutrix and the complainant have supported the case of the prosecution.

7. 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 since since 12.11.2022 and total custody is of 01 year, 08 months and 25 days as on 07.08.2024 and the trial of the case has not even reached halfway mark as only 03 out of 13 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.

8. 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.

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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.”

9. In view 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 Sukhdev Singh is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

10. 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

09.08.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No