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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-5844-2024 (O&M)
Date of decision: 29.07.2024

Jasveer Singh @ Nikka

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

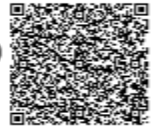
Present: Mr. K.S. Brar, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in case bearing FIR No.65 dated 03.05.2022 under Sections 363, 366-A, 120-B, 376 of the Indian Penal Code, 1860 and Sections 4 & 5 of The Protection of Children from Sexual Offences Act, 2012, registered at Police Station City-1 Abohar, District Fazilka.
2. The present FIR was registered on the basis of statement of father of the prosecutrix, on the allegations that he was doing the labour

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work and was having two children i.e. one son and one daughter and they were studying. On 28.04.2022, he received a phone call from his wife and his son that his daughter was not at home and after searching for her in the nearby area and from neighbourhood, she was not found. Thereafter, on checking of mobile phone being used by his son, it was found that just prior to missing of his daughter, a phone call was received from unknown mobile No.88472-02172, which was registered in the name of the petitioner. On making an enquiry, it was found that on the pretext of marriage, the petitioner along with Gurpreet Singh and Bihari Lal enticed away his daughter. It is further stated that the accused persons were aware about the whereabouts of his daughter as co-accused Bihari Lal and Gurpreet Singh told him that his daughter was at Anandpur Sahib. The complainant also stated that his daughter is innocent and is not wise. He was afraid that some one may commit wrong act with her.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is behind bars since 04.05.2022. As per initial case set up by the prosecution, the allegations are against the petitioner and two other persons namely Gurpreet Singh and Bihari Lal that they enticed away daughter of the complainant. She was recovered on 06.05.2022 from Amritsar i.e. after three days of registration of FIR (*supra*). The victim-prosecution was produced before the jurisdictional Magistrate and her statement under Section 164 Cr.P.C. was recorded, which is available on record as Annexure P-2. It is

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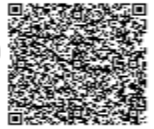


further contended that perusal of statement of the victim-prosecution clearly indicates that she mentioned that the petitioner is innocent and she left her house alone after getting annoyed with family members. She clearly indicated that the petitioner has no role in the commission of offence. Learned counsel for the petitioner also contends that the victim-prosecutrix refused to undergo the medical examination and she also refused to go to her parental house and as such, she was sent to Nari Niketan, Jalandhar.

4. Status report by way of affidavit of Arun Mundan, PPS, Deputy Superintendent of Police, Sub Division Abohar, District Fazilka, filed in Court today, is taken on record. Copy thereof has been supplied to learned counsel for the petitioner.

5. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that he is main accused and he enticed away minor daughter of the complainant.

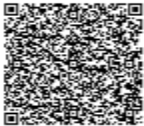
6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind bars since 04.05.2022 and the trial of the case has not even reached halfway mark, as out of 22 prosecution witnesses, only 01 PW has been partially examined till date. 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.



7. 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.”

8. 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 Jasveer Singh @ Nikka 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.

9. 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.

29.07.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No