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

CRM-M-6874-2024

Date of decision: 16.09.2024

Vicky Kumar

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. S.S. Sarwara, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG, Punjab.

Ms. Gurnam Kaur Turka, Advocate
for respondents No.2 & 3.**HARPREET SINGH BRAR, J. (ORAL)**

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.63 dated 24.05.2022 under Sections 363/366-A of IPC (Sections 376(2)(n)/323/328/120-B of IPC and Section 6 of POCSO Act, 2012 added subsequently), registered at Police Station Ghanaur, District Patiala (Annexure P-1).

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 20.05.2022, her daughter, namely, Jasanpreet Kaur, had gone to school to give her exam in the afternoon by Activa No. PB 11 B Z 2382 at Government Senior Secondary School, Lohsimbli and her exam was over at 04:00 P.M. but she did not return home. The complainant tried to search her everywhere but could not trace her. It is further alleged that the daughter of the complainant earlier told her several times that Vicky Kumar (the petitioner



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herein) was following her for the last one year and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that relationship between the petitioner and the daughter of the complainant was consensual in nature and both of them had eloped and started staying in a live-in relationship and their relationship was opposed to their families and they apprehending threat to their life, both of them filed a joint petition bearing No. CRWP-5144-2022 titled as 'Jashanpreet Kaur and another Vs. State of Punjab and others' before this Court which was decided on 27.05.2022 (Annexure P-5). The prosecutrix 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-4 and the perusal of the same indicates that the prosecutrix has not made any allegation against the petitioner. He further submits that the petitioner has been in custody for the last more than two years and he is not involved in any other case except one case under the Prisons Act.

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 at the time of the incident, the prosecutrix was minor and there are serious and specific allegations against the petitioner.

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



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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 for the last 02 years 02 months and 17 days as on 13.09.2024. 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 even reached half way mark as only 01 out of 29 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.

Keeping in view the law laid down by the Hon'ble Supreme Court of India in 'Prabhakar Tewari Vs. State of U.P. and another' 2020 (1) R.C.R. (Criminal 831) and 'Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another', 2012 (2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

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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-Vicky Kumar 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

16.09.2024*Neha*

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