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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-18897-2024

Date of decision: 12.08.2024

Ambika

...Petitioner

Versus

State of Haryana

...Respondent

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

Ms. Geeta Sharma, DAG, Haryana.

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.02 dated 07.01.2024 under Section 10 of POCSO Act, 2012 (Section 6 of POCSO Act, 2012 added later on and Section 10 of POCSO Act, 2012 is deleted) registered at Women Police Station Manesar, Gurugram.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 07.01.2024 at about 01:00 P.M. her daughter, namely, 'T' aged about 07 years (at the time of incident) was playing in the street then the accused/petitioner, who has been residing in the same building, asked the victim to bring some article and, thereafter, took the victim in his room and removed her pants and tried to sexually violate her. On hearing the cries of the victim, her brother rushed to her rescue and when the victim disclosed the incident to her and her husband, they went to the room of the accused/petitioner from where, he tried to escape and thus, the instant FIR got registered.



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Learned counsel for the petitioner *inter alia* contends that initially the FIR (*supra*) was registered under Section 10 of the POCSO Act, thereafter, just to aggravate the allegations, Section 6 has been added and there is no evidence in this regard. Even when the statement of the prosecutrix was recorded under Section 164 Cr.P.C., she has made no allegation which would breach the threshold of the offence under Section 6 of the POCSO Act. The material witnesses have been examined. The complainant and the prosecutrix both have not supported the case of the prosecution and they have been declared hostile by the learned Public Prosecutor. He further submits that petitioner is behind the bars since 07.01.2024 and he is not involved in any other case.

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 of seriousness of the offence and heinousness of the crime. She further submits that there are serious and specific allegations against the petitioner and he has sexually harassed the minor girl of the complainant. However, she could not controvert the fact that the petitioner is not involved in any other case.

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 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 since 08.01.2024 as per custody certificate. 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 made much progress as only 10 out of 13 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.

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-Ambika 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

12.08.2024
Neha

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