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

CRM-M-10762-2024

Date of decision: 31.07.2024

Shankar

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Sahir Singh Virk, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Mayank Goyal, Advocate
for the prosecutrix/respondent No.2.**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.201 dated 04.10.2023 under Sections 363/366/376(2)(n)/506/120-B of IPC and Section 67-A of I.T. Act registered at Police Station Baragudha, District Sirsa.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that his daughter/victim had gone out of her house without telling anything to anybody. It is further alleged that the complainant came to know that Shankar (the petitioner herein) has enticed away his daughter by alluring her on the pretext of marriage and about 5/6 days earlier, the accused/petitioner had committed wrongful act against the victim and prepared obscene video which has been made viral and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the prosecutrix is a major girl of 23 years of age and she is mature enough to know



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her good and bad. It is further contended that the prosecutrix was in a consensual relationship with the petitioner and she has left her house with her own will and started living with the petitioner and they have lived together for five years and the prosecutrix knew that the petitioner is already married. He further submits that the prosecutrix and the petitioner have executed a live-in relationship deed on 02.10.2023 and the same is available on record as Annexure P-2. There is no other evidence against the petitioner to corroborate the case set up by the prosecutrix except his confessional statement recorded while in police custody.

The learned State counsel has filed custody certificate along with status report dated 29.07.2024 in the Court today which is taken on record. The learned State counsel assisted by learned counsel for the prosecutrix opposes the grant of regular bail to the petitioner on the ground that petitioner has sexually exploited the prosecutrix and she was kept in dark that petitioner is already married and, thereafter, the petitioner made an obscene video of the prosecutrix and made it viral. He further submits that another FIR has been registered against the petitioner on 09.07.2024 on the complaint made by the complainant and as such, he is not entitled to regular bail.

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



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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 21.10.2023. 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 01 out of 21 prosecution witnesses has 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-Shankar 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

31.07.2024

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