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

CRM-M-12422-2024

Date of decision: 31.07.2024

Sahil Khan

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Balraj Gujjar, 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.69 dated 13.06.2023 (Annexure P-1) under Section 6 of POCSO Act, 506 of IPC registered at Police Station Women Central, Faridabad District, Faridabad (Haryana).

The FIR (*supra*) was lodged on the statement of the complainant/prosecutrix by alleging that she is 14 years old (at the time of incident) and studying in Class 10th. She developed friendship with her neighbour, namely, Sahil (the petitioner herein). It is further alleged that one year before, the accused/petitioner allured her in sweet words and called her on the floor of C-Tower and forcibly developed physical relations with her and thereafter, he committed sexual assault upon her by extending threat of her life and lastly, he has developed physical relations with the prosecutrix one month before and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the FIR (*supra*) was registered after a delay of one year from the first incident and,



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thereafter, the complainant/prosecutrix was examined as PW-1 and she has herself admitted her friendship with the petitioner. It is further contended that no date and time of the alleged occurrence has been given. Even there is delay of one month in the registration of the FIR (*supra*) after the second incident and the proximity between the age of the petitioner and the prosecutrix requires a lenient view. The petitioner is in custody since 13.06.2023 and material witnesses including the victim/prosecutrix and her mother have already been examined by the learned trial Court. It is further submitted that there is no corroboration in the shape of medical evidence or FSL report.

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 gravity of offence. She further submits that the petitioner has sexually exploited the minor girl and as such, he is not entitled to regular bail. 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."

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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 01 year 01 month and 17 days 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 01 out of 16 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-Sahil Khan 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