

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

CRM-M-13314-2024
Date of decision: 25.07.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Sandeep Kumar, DAG, Punjab.

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.35 dated 23.02.2023 under Sections 363/366-A/376 of IPC and Section 4 of POCSO Act, registered at Police Station City-I, Abohar, District Fazilka.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 20.02.2023 at about 08:30 P.M., her daughter/victim left the house to purchase something from *karyana* store and did not return. The complainant, thereafter, searched her daughter/victim everywhere but could not trace her and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner is behind the bars since 27.02.2023 and there is nothing on record which could authenticate the actual age of the prosecutrix and even the ossification test of the victim has not been conducted to determine her probable age. The primary entry with regard to the date of birth of the prosecutrix has not been procured by the Investigating Agency and, as such, the petitioner



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cannot be held liable for the offence which breaches the threshold of Section 4 of POCSO Act. In fact, the petitioner and the prosecutrix were in a consensual relationship and due to the opposition of their families, they had eloped and the FIR (*supra*) was registered after a delay of three days.

The learned State counsel has filed the 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 the complicity of the accused/petitioner is clearly established on the basis of the FSL and DNA report, however, he 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 for 01 year 04 months and 26 days as per custody certificate. Investigation is complete.

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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 05 out of 21 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-Gurpreet Singh @ Gopi 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

25.07.2024*Neha*

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