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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13762-2024 (O&M)
Date of decision: 29.07.2024

Chandra Bosh

... Petitioner

Vs.

State of Haryana and others

... Respondents

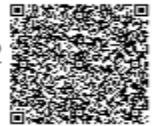
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. O.S. Batalvi, Advocate and
Mr. D.S. Batalvi, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in case bearing FIR No.727 dated 27.09.2022 under Sections 363, 366-A, 323, 386, 120-B, 414 of the Indian Penal Code, 1860 and Sections 6 & 12 of The Protection of Children from Sexual Offences Act, 2012, registered at Police Station Sector-58, Faridabad.
2. The present FIR was registered on the basis of an application given by father of the prosecution, on the allegations that he had four



daughters and one son. On 22.09.2022 at about 11.00 p.m., his daughter-prosecutrix went missing from the house and some unidentified persons, by enticing her, took her away on the pretext of marriage and she also took jewellery and money with her. The complainant prayed that his daughter may be searched.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case, only on the allegations that his vehicle was used by the main accused, while he was travelling with daughter of the complainant. He further contends that in fact, the prosecutrix was having consensual relationship with main accused Sher Singh and at the time of incident, the prosecutrix was major. Learned counsel for the petitioner relies upon statement of the prosecutrix recorded under Section 164 Cr.P.C. (Annexure P-4) and submits that the prosecutrix clearly indicated that she was major at the time of incident and she solemnized marriage with Sher Singh at Mathura on 08.07.2022 and on 21.09.2022, her family members forcibly took her back to their house. However, on 22.09.2022, she again went back to her in-laws house and she expressed her desire to go with her husband.

4. *Per contra*, learned State counsel, on instructions from ASI Mohd. Eliyas, opposes the prayer for grant of regular bail to the petitioner on the ground that complicity of the petitioner is duly proved on record and his vehicle was used in the commission of offence. She produces the status report by way of affidavit of Rajeev Kumar, HPS, Assistant Commissioner

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of Police, Mujesar, District Faridabad as well as custody certificate dated 26.07.2024 of the petitioner, in the Court today, which are taken on record. However, she could not controvert the fact that the petitioner is not involved in any other case.

5. Complainant Kirpal Singh is present in person in the Court, who is duly identified by Investigating Officer ASI Mohd. Eliyas and opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner is in fact one of the main conspirator and he remained with main accused and his daughter till 29.09.2022 and he is co-villager of other accused. He produces certified copy of the order dated 07.02.2023 passed by High Court of Judicature at Allahabad in Habeas Corpus Writ Petition No.935 of 2022 and submits that his daughter made statement before the High Court on 07.02.2023 and denied the factum of marriage and she refused to go with co-accused Sher Singh. As such, the prosecutrix was allowed to go with the complainant. Certified copy of the said order is taken on record as Mark 'A'.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind bars since 26.09.2023 and the trial of the case will take long time in its conclusion, as none out of 26 prosecution witnesses has been examined so far. The culpability, if any, would be determined at the time of trial. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights



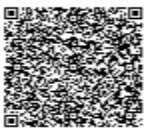
under Article 21 of the Constitution of India.

7. A two Judge Bench of the Hon'ble Supreme Court in ***Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed as under: -

“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.”

8. In view the above, present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner Chandra Bosh is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of

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learned Illaqa Magistrate/trial Court concerned.

9. 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.

29.07.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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