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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15568-2024

Date of decision: 28.05.2024

Dhanjeet Kumar @ Golu

....Petitioner

Versus

State of Haryana

...Respondent

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

Mr. Vikas Bhardwaj, AAG, 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.747 dated 09.10.2023 under Section 365 of IPC and Section 4 of POCSO Act, registered at Police Station Kundli, District Sonapat.

The FIR (*supra*) was lodged on the allegations that on 09.10.2023, father of the victim arrived in Police Post Barota and gave an application asserting therein that on 09.10.2023 at around 04:00 A.M. when he came for strolling, he saw that his daughter/victim aged 15 years, was not available at home. They searched the victim at their own level but could not find her. He raised suspicion that some unknown persons enticed away his daughter/victim and thus, the present FIR was registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. The falsity of the FIR (*supra*) is apparent from the fact that the complainant in her statement made before the jurisdictional Magistrate under Section 164 Cr.P.C. has clearly



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mentioned that she went with the petitioner with her own sweet will and stayed with him for 3-4 days at different places including the house of his grandmother and during this time, the petitioner did not develop any physical relationship with her. Even the medical evidence does not corroborate the case set up by the complainant and the petitioner is behind the bars since 23.10.2023. The Investigating Agency has already concluded the investigation. It is further contended that even FSL report is negative *qua* sexual assault.

The learned State counsel has filed the status report and 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 allegations levelled against the petitioner, are of serious nature and the victim is a minor.

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



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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 22.10.2023 and the prosecutrix/victim has already been examined by the learned Court below. 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 one out of 22 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-Dhanjeet Kumar @ Golu 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

28.05.2024

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