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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-627-2024

Date of decision: 30.07.2024

Sandeep

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sunny Tyagi, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present revision petition has been filed for setting aside the impugned order dated 16.02.2024 passed by the learned Additional Sessions Judge, Panipat and order dated 08.02.2024 passed by the learned Principal Magistrate Juvenile Justice Board.

Brief facts of the case are that on 16.08.2023 at around 11:00 A.M., daughter of the complainant, who was 16 years old at the time of incident, left for the sewing center and did not return. The complainant tried to search her everywhere but could not trace her and thus, FIR No.450 dated 17.08.2023 under Section 365 of IPC was registered at Police Station Industrial Sector 29, Panipat.

Learned counsel for the petitioner *inter alia* contends that at the time of the incident, the petitioner was minor and he has been declared a juvenile and the victim/prosecutrix was found on 25.08.2023, thereafter, her statement under Section 164 Cr.P.C. was recorded in which she has not made any allegation against the petitioner rather, she has disclosed that she has gone



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to the house of her maternal grandmother. A copy of statement of the victim recorded under Section 164 Cr.P.C. is available on record as Annexure P-1. He further contended that on 08.09.2023, the prosecutrix/victim has made another statement recorded under Section 164 Cr.P.C. and she named four more persons and all of them were found innocent during investigation. It is further submitted that the victim/prosecutrix has also refused to undergo medical examination and admittedly, the victim was not recovered from the possession of the petitioner and the Investigating Agency has already concluded the investigation and presented final report on 09.11.2023.

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 that petitioner has enticed away the minor daughter of the complainant and sexually abused her, as such, he is not entitled to the concession of regular bail, however, she could not controvert the fact that the petitioner is not involved in any other case and has already undergone actual sentence of 10 months and 07 days as on 29.07.2024.

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 since 23.09.2023 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 out of 14 prosecution witnesses, none 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 criminal petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Sandeep 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

30.07.2024
Neha

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