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

CRM-M-15805-2024

Date of decision: 20.11.2024

Bijender Singh @ Vijender Singh

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Kulwinder Singh, 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.86 dated 03.11.2022 under Section 6 of POCSO Act, 2012 and Sections 506/323/376(2)(n) of IPC (Section 10 of POCSO Act added later on and Section 376(2)(n) of IPC was removed later on) registered at Women Police Station, Panchkula.

The FIR (*supra*) was registered on the statement of the complainant by alleging that on 02.07.2022 her elder daughter who was 10 years of age (at the time of incident) told her that she has been sexually assaulted by the present petitioner three times by touching her inappropriately in the absence of all family members and her pregnancy report came out to be positive. It is further alleged that the accused/petitioner also extended threats to the victim to not share the incident with anyone else otherwise he would kill her and her younger sister, namely, Ruhi, and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that petitioner has been falsely implicated in the present case due to a long standing



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dispute regarding the property. Initially, one complaint was filed on 03.07.2022 and thereafter, on 16.07.2022, she gave another application and after examining the veracity of the allegations, the jurisdictional police authorities concluded that it is a case of family dispute and proceedings under Sections 107/151/150 of IPC were initiated on 23.07.2022. Thereafter, on 03.11.2022, the FIR (*supra*) was registered. The Investigating Officer has sought the opinion of the doctor with regard to the pregnancy of the prosecutrix and on 17.11.2022, the doctor gave a specific opinion that the prosecutrix is not pregnant and excessive bleeding could be due to puberty and menstruation. However, possibility of the molestation cannot be ruled out, as such, there is nothing on record to substantiate that the petitioner can be held liable for any offence breaching the threshold of Section 376(2)(n) of IPC and Section 6 of the POCSO Act. He further submits that the petitioner is behind the bars since 04.11.2022 i.e. for the last more than two years and the delay in trial cannot violate the fundamental right of the petitioner enshrined under Article 21 of the Constitution of India.

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 the accused/petitioner has committed a heinous crime and has exploited the minor daughter of the complainant, as such he is not entitled to any relief.

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 04.11.2022. 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 even reached half way mark as only 04 out of 13 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-Bijender Singh @ Vijender Singh 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

20.11.2024
Neha

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