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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18781-2024 (O&M)
Date of decision: 24.04.2024

Deepak Mehta

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ankur Lal, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.324 dated 04.10.2023 under Sections 323 & 506 of the Indian Penal Code, 1860 (for short 'IPC') (Section 324 of IPC added later on) and Sections 8 & 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), registered at Police Station City Rewari, District Rewari, Haryana.
2. The present FIR was registered on the basis of complaint made by the complainant on the allegations that three months ago, her daughter-prosecutrix told her that one Deepak Mehta (petitioner), who is living in their neighbourhood, is running a shop in his house and he used to tease her

daughter, when she went to his shop to buy things and even touched her daughter many times. When her daughter was coming from school, the petitioner stared at her with wrong intentions and made bad gestures. Thereafter, the complainant told about the incident to her husband. When husband of the complainant went to house of the petitioner, he stabbed him with a knife in his stomach. The husband of the complainant was badly injured and he was taken to trauma Centre and was referred to Rohtak.

3. Learned counsel for the petitioner, *inter alia*, contends that in fact, a minor scuffle took place between husband of the complainant and the petitioner and offence, which breaches the threshold is Section 324 of IPC. However, to aggravate the offence and to make it non-bailable, false version has been introduced that the petitioner used to stare at daughter of the complainant indecently and touched her 2-3 times, when she had to go to buy household articles from his shop. It is further contended that such version is totally far-fetched and not plausible. Investigating agency has already concluded the investigation and maximum sentence provided for the offences, under which FIR (*supra*), has been registered, is upto 03 years. Perusal of the record clearly indicates that factual ingredients of POCSO Act are missing. Material witnesses i.e. complainant and the victim have already been examined by learned trial Court.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner is the main accused and he is running a grocery shop and whenever daughter of the complainant used to go there to purchase some household articles, the

petitioner used to touch her inappropriately.

5. 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 04.10.2023; investigating agency has already concluded the investigation and presented the final report; material witnesses have already been examined and only 07 out of 17 prosecution witnesses have 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.

6. 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.”

7. 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 Deepak Mehta is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

8. 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.

24.04.2024
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**[HARPREET SINGH BRAR]
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No