

Date of decision: 29.04.2024

....Appellant

...Respondents

Mr. Vikas Bhardwaj, AAG, Haryana.

Brief facts of the case are that on 15.03.2023, an application was received through post in the office of Superintendent of Police, Hansi, wherein, complainant i.e. mother of the victim made allegations to the effect that on 18.02.2023 at about 06:30 A.M., victim/prosecutrix i.e. her daughter had left home for some work but did not return home for long time. On searching, her younger daughter told that the victim/prosecutrix used to talk to Darshan and on the basis of suspicion, she along with her husband and mother-in-law went to contact Darshan and Darshan told them that victim/prosecutrix was not present

there. When the husband of the complainant opened the door, he found the victim in an objectionable condition and accused-Darshan fled away and the victim/prosecutrix went to Police Post Bhatla. On receiving a call from the Police Post Bhatla, the Sarpanch along with the complainant and her husband, reached Police Post and found the victim/prosecutrix in a nervous and panic condition. When they asked the police personnel to take action against the accused, the police personnel started threatening them and instead of handing over the victim to them, they sent her to the village along with Himanshu, member of Sarpanch of village Chanot. Himanshu called the family members of the accused and handed over the victim/prosecutrix to the accused and his family against their will, and thus, the present FIR was registered.

Learned counsel for the appellant *inter alia* contends that no offence as alleged in the FIR is made out against the appellant. There is no medical evidence available on record to indicate the complicity of the appellant in the alleged occurrence. Learned counsel further refers to Annexure A-2 which is an application for medical examination of the victim/prosecutrix and perusal of the same indicates that she has refused to get herself physically or internally examined. Further, counsel for the appellant relies upon the statement of the victim/prosecutrix recorded under Section 164 of Cr.P.C. by the learned Judicial Magistrate 1st Class, Hansi which clearly indicates that on 18.02.2023, the victim/prosecutrix went to the house of the appellant and started living with his parents and she has not made even a whisper with regard to any wrong act having been committed upon her by the appellant. It is further contended that the age of the prosecutrix has been wrongly given as 16 and a half years. Only school living certificate is taken into possession by the

Investigating Officer. The primary entry with regard to her age has been withheld.

Per contra, the learned State counsel opposes the prayer made by learned counsel for the appellant on the ground that there are specific and serious allegations against the appellant and thus, he does not entitle to the relief of regular bail and also, he is accused of heinous crime and material witnesses are yet to be examined. However, he could not controvert the fact that the appellant is not involved in any other case and he has been in custody since 07.04.2023 and not even a single prosecution witness has been examined so far.

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 appellant is behind the bars since 07.04.2023. 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 not even a single prosecution witness 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/appellant. Keeping the appellant 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 appeal is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the appeal-Darshan 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

29.04.2024

Neha

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