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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19545-2024 (O&M)
Date of decision: 16.07.2024

Vijay Gautam

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kunal Choksi, Advocate
for the petitioner.

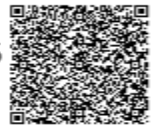
Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in case bearing FIR No.55 dated 28.01.2020 under Sections 363, 366A, 328, 450, 506 of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Sadar Ballabgarh, Faridabad.

2. The present FIR was registered on the statement of complainant 'G' (name withheld) on the allegations that her daughter-prosecutrix 'P'

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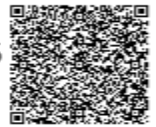
(name withheld) is 14 years of age and is studying in 6th Class and on 27.01.2020, she, without informing to anybody, went away from home. She has suspicion that the petitioner, who was residing in the vicinity on rent, enticed away her daughter on the pretext of marriage. Earlier he was harassing the prosecutrix. Therefore, a prayer was made to trace her daughter and to take action.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is behind bars since 12.10.2021. The prosecutrix and her mother have already been examined and the prosecution has given up father of the prosecutrix and out of total 25 prosecution witnesses, only 05 have been examined till date. The petitioner was having consensual relationship with the prosecutrix and date of birth of the prosecutrix has not been proved in accordance with law and only School Leaving Certificate is available on record.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner has sexually exploited the prosecutrix, who was around 14-15 years of age at the time of incident and she has specifically named the petitioner in her statement recorded under Section 164 Cr.P.C. by learned jurisdictional Magistrate and she reiterated the allegations, while deposing as a witness.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the

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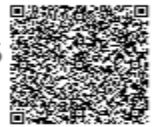


petitioner is behind bars since 12.10.2021 and the trial of the case has not even reached halfway mark as only 05 out of 25 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

6. The foundational concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last Court.

7. It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play.

8. In this regard, reference is being made to the law laid down by the Hon'ble Supreme Court in the context of right to speedy trial under



Article 21 of the Constitution of India on the following decision:- ***Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh Vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578, Babu Singh and others Vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others Vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh Vs. State of U.P. (2JJ.) and Fazal Vs. State of Uttar Pradesh, (2012) 5 SCC 752.***

9. 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.”

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10. 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 Vijay Gautam 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.

11. The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case lest it may prejudice the outcome of the case pending before learned trial Court.

12. 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

16.07.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No