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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19208-2024 (O&M)
Date of decision: 04.07.2024

Nikhil Sahi

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Divij Datt, 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.544 dated 07.11.2023 under Sections 313, 376(2)(N), 406, 506 of the Indian Penal Code, 1860, registered at Police Station Dabua, District Faridabad (*challan presented under Sections 376(2)(N), 406, 506 of IPC*).
2. The present FIR was registered at the instance of complainant 'C' (name withheld) on the allegations that she met the petitioner through social media platform (Instagram) and after few days of friendship, they exchanged their mobile numbers and started talking. On 12.08.2023, the petitioner went to house of the prosecutrix to have a talk regarding marriage



and he forcibly made physical relations with her and she became pregnant. When she told him about the pregnancy, the petitioner asked her to abort the pregnancy and also asked to take pills. When she refused to take the pills, he sent photos and videos taken while making physical relations on her social media account and her family. Under threat, the petitioner had sex with the complainant-prosecutrix about five times and also demanded money from her. She gave some amount to the petitioner and when she refused to give the money, he threatened her about sharing of same photos and videos on social media and with family members. He had also sent some boys to her street to threaten her. Due to fear, she gave total Rs.20,000/- to him. The petitioner again asked Rs.10,000/- to Rs.15,000/- from the complainant-prosecutrix and when she refused, he threatened her. Their last contact was on 26.09.2023. Ultimately, she told the entire incident to her family members.

3. Learned counsel for the petitioner, *inter alia*, contends that the prosecutrix is major and the petitioner and the prosecutrix were having consensual relationship and both of them met through social medial portal (Instagram). The allegations made against the petitioner are that he sexually exploited the prosecutrix on the pretext of marrying her, which seems too far-fetched. The petitioner never promised the prosecutrix to marry her and there is a delay of 02 months in registration of the FIR (*supra*) from the last incident. There is nothing on record in the shape of medical evidence or any scientific evidence to corroborate the case set up by the prosecution. Now the prosecutrix has amicably settled her dispute with the petitioner, as is evident from her affidavit dated 28.03.2024, which is available on record as



Annexure P-2. As such, FIR (*supra*) deserves to be quashed in view of the ratio of law laid down by the Hon'ble Supreme Court in ***Kapil Gupta Vs. State of N.C.T. of Delhi and another, 2022 (4) RCR (Crl.) 497*** and ***Karan Sharma Vs. State of Haryana and another, 2021(1) Law Herald 149***.

The petitioner is behind bars since 08.11.2023 and he is not involved in any other case.

4. *Per contra*, learned State counsel, on instructions from ASI Nancy, opposes the prayer for grant of regular bail to the petitioner on the ground that mobile phone of the petitioner has been taken into possession, in which he has prepared video(s) of the complainant-prosecutrix and he has also threatened the prosecutrix.

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 08.11.2023; the petitioner and the complainant-prosecutrix are major and now they have effected a compromise and as such, the prosecutrix is not likely to support the case of the prosecution and further incarceration of the petitioner without trial being completed in near future would be violative of Article 21 of the Constitution of India, as none out of 15 prosecution witnesses has been examined so far. The culpability, if any, would be determined at the time of trial.

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 Nikhil Sahi 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.

[HARPREET SINGH BRAR]
JUDGE

04.07.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No