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

CRM-M-19099-2024

Date of decision: 25.04.2024

Hanish Gulati

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajan Singh Dadwal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking grant of regular bail to the petitioner in case bearing FIR No.82 dated 17.11.2023 under Sections 376/294/427/506 of IPC and Sections 66(E) and 67 of Information Technology Act, 2000 and Section 201 of IPC added later on, registered at Police Station City Raikot, District Ludhiana Rural.

The FIR (*supra*) was lodged on the statement of complainant-Sonia that she has been married to Sanjeev Takkar for almost 17 years and out of this wedlock, they have two children. They had a shop of footwear at Raikot where in the year 2015-16, one boy, Hanish Gulati (petitioner herein) was working and after one year he left the shop. As he was working on their shop, he used to visit their house. During this period, he used to call the complainant on her mobile No.98144-00273 and they started talking to each other. He also came to meet the complainant at her house once/twice. It is further alleged that

one day when the complainant was talking to Hanish Gulati on phone, her husband checked her phone and came to know about this. Afterwards, the complainant stopped talking to the accused and thereafter, for five years, he has not harassed her. Now from July, 2023, Hanish Gulati again started harassing, threatening and forcing her to meet him otherwise, he will implicate her husband in a false narcotic case and also kill her children. One day the accused came in front of her school and made her sit in his car bearing No. PB 03 AH 9900 Verna Colour White and asked her to drink water. After drinking water, she became unconscious and Hanish Gulati took her in the room of GV Guest House, Raikot, where he forcible made physical relation with her and made an obscene video of the complainant. On 27.09.2023, the morning, he came in front of the gate of the house of the complainant and abused in obscene language and broke the camera installed outside on the gate of her house and taken away the broken camera. Further, on 16.11.2023, he called from different numbers on the mobile of her husband and her brother and gave threats and hurled abuses and sent her obscene video on the WhatsApp of her husband and deleted the same after few minutes and threatened her husband to send her to him otherwise he will upload the videos and photographs on internet and thus, the present FIR was registered.

Learned counsel for the petitioner *inter alia* contends that the prosecutrix is a married lady of 40 years of age. The prosecutrix and the petitioner have developed liking for each other and were in a consensual relationship. However, when the husband of the prosecutrix came to know about their relationship, a dispute arose and the FIR (*supra*) has been registered against the petitioner. The perusal of the record clearly indicates that it was a

consensual relationship lacking *mens rea*. It is further contended that the prosecutrix as well as her husband have already been examined by the learned trial Court and both have not supported the case of prosecution and have been declared hostile by the Public Prosecutor.

Per contra, the learned State counsel submits that the petitioner is the main accused and there are serious allegations against him and as such, he is not entitled for the relief of regular bail.

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

18.11.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 08.02.2024 and trial of the case has not made much progress as only 04 out of 17 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-Hanish Gulati 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

25.04.2024
Neha

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