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

CRM-M-20873-2023

Date of decision: 24.07.2024

Maskeen Ali

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rahul Rana, Advocate for
Mr. Vikram Rana, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.334 dated 04.08.2022 under Sections 201/34/366/376-D/506/363 of IPC registered at Police Station Pehowa, District Kurukshetra, Haryana.

The FIR (*supra*) was registered on the statement of the complainant by alleging that on 30.07.2022, he went to feed his buffaloes in grain market, Gumthala Garhu and was staying there with his family. It is further alleged that before his marriage with his wife, his wife was having a love affair with one Maskeen Ali (the petitioner herein). Previously, the accused/petitioner has kidnapped his wife twice. At that time also, she was brought back after one month by the Ludhiana Police and a case was registered in this context in Nawan Shahar. Today at around 02:00 A.M., in a white colour car, accused-Maskeen Ali along with 3/4 accomplices came and took away his wife and son forcibly and, thus, the instant FIR got registered.



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Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and in fact the victim/prosecutrix was having love affair with the petitioner and she has solemnized marriage with the petitioner and the same was also registered vide marriage agreement dated 24.01.2020. On earlier instances also, the victim/prosecutrix has given statements endorsing the innocence of the petitioner. The petitioner is behind the bars since 22.08.2022 and on the same set of allegations, the petitioner has been booked in two different FIRs which was thoroughly examined by the jurisdictional police authorities.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that specific allegations have been levelled against the petitioner and he has repeatedly kidnapped the prosecutrix/victim. The authenticity of the marriage between the parties yet to be examined and it is a matter of trial. However, she could not controvert the fact that the petitioner is not involved in any other case.

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,



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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 22.08.2022. 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 only 03 out of 21 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-Maskeen Ali 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

24.07.2024

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