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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-21068-2024 (O&M)
Date of decision: 02.05.2024

Gurjant Singh @ Janty

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kewal Krishan, Advocate for
Mr. R.D. Rattewal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking regular bail in case bearing FIR No.68 dated 28.08.2023 under Sections 363 & 366-A of the Indian Penal Code, 1860 and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (added later on vide DDR No.36 dated 06.09.2023), registered at Police Station Balachour, District SBS Nagar.
2. The present FIR was registered at the instance of Swaran Singh on the allegations that he is doing the labour work and has five children and

the prosecutrix, whose date of birth is 10.06.2009, was studying in Class 8th. The complainant's sister-in-law (*saali*), who is living at Village Raju Majra, was suffering from eye infection and was not able to prepare the meal, therefore, she called the prosecutrix to do the household work. On 02.08.2023, son of sister-in-law (*saali*) of the complainant telephonically informed the complainant that the prosecutrix went to the shop for bringing some household articles, but she did not return back. After searching for her, she was not found. He had a suspicion that Gurjant Singh had enticed away the prosecutrix on the pretext of marriage.

3. Learned counsel for the petitioner, *inter alia*, contends that no allegation with regard to sexual assault is attributed to the petitioner. Statement of the prosecutrix was recorded under Section 164 Cr.P.C., in which she totally exonerated the petitioner. The FIR (*supra*) was registered after a delay of 26 days, which makes the entire case of the prosecution suspicious. The petitioner is behind bars since 06.09.2023 and is not involved in any other case and the investigating agency has already concluded the investigation.

4. *Per contra*, learned State counsel, on instructions from ASI Balwinder Singh, opposes the prayer for grant of regular bail to the petitioner on the ground that there are serious allegations against him. However, he could not controvert the fact that the prosecutrix in her statement under Section 164 Cr.P.C. has not alleged anything against the petitioner.

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 the bars since 06.09.2023; he is not involved in any other case and out of total 19 prosecution witnesses, none has 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. 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 Gurjant Singh @ Janty is ordered to be released on regular bail during trial on his furnishing bail/surety bonds to the satisfaction of Illaqa Magistrate/trial Court.

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.

02.05.2024
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[HARPREET SINGH BRAR]
JUDGE

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