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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-21637-2024 (O&M)
Date of decision: 07.05.2024

Kadir

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.K. Bawa, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Mohd. Tarif, Advocate
for respondent No.2-complainant.

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.52 dated 26.05.2017 (in the final report, date of FIR is mentioned as 25.05.2017) under Sections 376-D & 506 of the Indian Penal Code, 1860 (for short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), registered at Police Station Mewat, District Mewat.

2. The present FIR was registered on the complaint made by father of the victim on the allegations that on 26.01.2017, when his minor daughter-victim had gone to the fields to bring fodder, Aalim son of Mubeen, Saikul son of Hamida and Naseem son of Abdulla came there and caught hold of her and Aamil and Saikul committed rape upon her. They threatened her that they would viral the video of her made by them and sexually exploited her for several times. They also used to make call to her on her mobile number from their mobile numbers, mentioned in the FIR (*supra*). The complainant also made a complaint to family members of the accused. On 04.05.2017, the victim was alone in the house and petitioner Kadir entered her house and he tried to commit rape upon her. He threatened her to viral the video of her, in case she would not allow him to commit rape upon her. In the meantime, the complainant reached at his house. Thereafter, petitioner Kadir fled away from his house and the victim narrated about the entire incident to the complainant-her father.

3. Learned counsel for the petitioner, *inter alia*, contends that perusal of the case set up by the prosecution would reveal that there are specific allegations of rape against co-accused Aamil, Saikul and Nadeem allegedly committed by them on 26.01.2017. The petitioner is alleged to have entered the house of the complainant on 04.05.2017 and tried to commit rape upon his daughter. The FIR (*supra*) was registered after a delay of 05 months from the date of first alleged incident of 26.01.2017. There is further delay of 22 days in registration of FIR from the date (04.05.2017) of

alleged attempt made by the petitioner to commit rape upon daughter of the complainant. In fact, FIR (*supra*) was registered as a counter-blast to FIR No.299 dated 05.05.2017 under Sections 323, 342, 365 & 506 of IPC, registered at Police Station Nuh on the complaint made by the petitioner against the complainant and his family members. Initially, the veracity of the allegations made by the complainant were found to be false and cancellation report was submitted on 01.12.2017. The jurisdictional Court had not accepted the cancellation report and once again, another cancellation report was submitted. However, the matter was again investigated and challan was presented on 21.07.2019 and the petitioner was declared proclaimed offender and thereafter, he was arrested and supplementary challan was presented against him on 02.02.2024. It is further contended that entire final report submitted against the petitioner is silent with regard to his complicity. Moreover, there is no medical evidence to corroborate the version of the complainant and prosecutrix and it was found during the investigation that the prosecutrix is married. The FSL report is also silent for lending any credence to the complainant's version.

4. Learned counsel for the petitioner relies upon the judgment of acquittal dated 02.09.2023 (Annexure P-5), in which learned trial Court recorded a specific finding that the prosecutrix was found to be residing at her in-laws house on 04.05.2017. It is further contended that once the main accused, who has allegedly committed the rape, has been acquitted, trial against the petitioner would not sustain.

5. *Per contra*, learned State counsel, assisted by learned counsel for respondent No.2-complainant, submits that charges have already been framed on 02.02.2024 and there are serious allegations against the petitioner and he does not deserve the concession of regular bail, as he was declared the proclaimed offender. However, she could not controvert the fact that the petitioner is not involved in any other case except one FIR under Section 174-A of IPC registered against him on being declared proclaimed offender.

6. 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 13.12.2023 and the trial of the case has not even reached halfway mark as out of 15 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.

7. 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.”

8. 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 Kadir is ordered to be released on regular bail during trial on his furnishing bail/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

9. 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.

07.05.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No