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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23001-2024 (O&M)
Date of decision: 13.05.2024

Vikas Rav

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vinod Ghai, Sr. Advocate with
Mr. Arnav Ghai, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, 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.642 dated 06.10.2023 under Sections 376 & 506 of the Indian Penal Code, 1860, registered at Police Station Sadar Gurugram, District Gurugram.
2. The present FIR was registered on the basis of complaint moved by the complainant-prosecutrix on the allegations that on 25.07.2023, she created an account for marriage on C&B application and on seeing the same, the petitioner called her and also sent message on her Whatsapp. The petitioner asked the complainant for marriage. On 05.08.2023, both met for the first time and discussed with regard to marriage and thereafter, shopping was also done. On 06.08.2023, the petitioner along with his brother Aaftab



and sister-in-law Deepika came to meet the complainant and they took her to Central Plaza. Thereafter, the petitioner dropped Deepika and Aaftab in Sector-31 and took the complainant to a hotel in Sector-38, Gurugram and after drinking the cold drink served by the petitioner, she felt dizziness and without her consent, he forcibly committed rape upon her. When the complainant objected, the petitioner told her that they would soon marry to each other. Thereafter, the petitioner started keeping distance from the complainant. After some time, the complainant received a phone call from a girl, who introduced herself as wife of the petitioner and she threatened her and demanded Rs.2.00 lacs by saying that she is having some objectionable photographs and videos. The complainant made an attempt to commit suicide and narrated the entire incident to her mother. Thereafter, her mother and sister went to Gurugram and called wife of the petitioner, who threatened to defame the prosecutrix. On 24.08.2023, the petitioner called her, abused her and threatened to viral her objectionable videos, if she made complaint to the police.

3. Learned senior counsel for the petitioner, *inter alia*, contends that the complainant is major and as per case set up by her, she met the petitioner through an online portal and on seeing the profile, the petitioner came in touch with her and they started exchanging messages and Whatsapp calls. The complainant further stated that the petitioner proposed to marry her. On 05.08.2023, they met for the first time and the allegation with regard to rape is of 06.08.2023, in which she accompanied the petitioner to a hotel in Gurugram. It is further contended that there is no sign of any struggle and



as per her own version, the complainant-prosecutrix kept roaming with the petitioner in his car and thereafter, they went to a hotel. The FIR (*supra*) was lodged after a delay of 02 months i.e. on 06.10.2023, whereas the alleged incident took place on 06.08.2023. A perusal of the record clearly indicates that the complainant improved her version in her statement under Section 164 Cr.P.C. and medical examination conducted after two months is of no consequence and it would not corroborate the version given by the complainant-prosecutrix.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner was already married, when came in contact with the complainant-prosecutrix and as such, his intention to cheat her on the pretext of marriage, is clearly discernible. However, learned State counsel could not controvert the fact that the petitioner is not involved in any other case and investigating agency has already concluded the investigation and challan qua the petitioner has also been presented.

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 31.12.2023 and the trial of the case is likely to take long time, as out of total 13 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 Vikas Rav 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

13.05.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No