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

CRM-M-23283-2024

Date of decision: 21.08.2024

Mannu Sharma

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Deepak Sharma, 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 regular bail in case bearing FIR No.72 dated 05.08.2023 under Section 376 of IPC and Section 6 of POCSO Act registered at Police Station Women, Amritsar (Annexure P-1).

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 19.05.2023 when his mother was searching his sister, namely, Babli, she had gone to the house of Pappu and at that time, the petitioner was tying the pants of his sister. It is further alleged that when his mother examined his sister, she was bleeding but they did not take the matter serious and due to the fear of society, they did not even share this incident to anyone. Further, it was stated that later on, his sister was telling his mother with her hands that she was feeling pain in her stomach and then, the complainant and his mother assured that on that day, the accused/petitioner had developed physical relations with the sister of the complainant and thus, the



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instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that it is a case of sheer false implication and the alleged incident has taken place in the dwelling unit of some other person which is totally improbable as the occupants of the said dwelling unit was having four children. He further submits that there is a major discrepancy between the statement made by the prosecutrix and the complainant. Moreover, in the FSL report and the medical report, nothing suggestive of sexual assault has been found and DNA report is also negative and the petitioner is behind the bars since 05.08.2023.

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 petitioner is the main accused and there are specific allegations against him regarding sexual assault with the minor girl who is 13 years at the time of incident and thus, does not entitled to 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 05.08.2023. 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 01 out of 18 prosecution witnesses has 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-Mannu Sharma 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

21.08.2024

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