2024:PHHC:067894

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-23523-2024 (O&M)
Date of decision: 15.05.2024

Jitender

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

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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.109 dated 27.08.2022 under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Sections 506, 354-D, 376(2)(n), 376(3) of the Indian Penal Code, 1860, registered at Women Police Station Rewari, District Rewari.

2. The present FIR was registered on the basis of a complaint given by the prosecutrix on the allegations that she is studying in 12th standard and

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when she was studying in Class 9th, the petitioner, on the pretext of giving gift on her birthday on 14.08.2019, called her and committed rape upon her in a hotel near Bus Stand, Rewari. She does not remember the name of the hotel, but she can identify the same. Thereafter, the petitioner, by threatening the prosecutrix, committed rape upon her 3-4 times and lastly, in January, 2021, he raped her. On 25.08.2022, the petitioner came to house of the prosecutrix and banged the door. When they saw from the window and it was petitioner Jitender and due to fear, they did not open the door. On 27.08.2022, the matter was reported to the police, on which, FIR (*supra*) was registered.

3. Learned counsel for the petitioner, *inter alia*, contends that perusal of the FIR (*supra*) would indicate that alleged occurrence took place on 14.08.2019, whereas the FIR (*supra*) was registered on 27.08.2022, after a gap of more than three years. Further, the version contained in the FIR (*supra*) is different from the statement of the prosecutrix recorded on 27.08.2022 by legal aid counsel (Annexure P-2) and her deposition made before learned trial Court as PW8 (Annexure P-8). Her stand was inconsistent and the prosecutrix was declared hostile by learned Public Prosecutor and even FSL report clearly establish that the version given by the prosecutrix is not correct, as forensic examination of phone of the petitioner do indicate his complicity; rather it proves his innocence and the petitioner is behind bars since 06.09.2022 and there is no other scientific

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evidence available on record to corroborate the inconsistent version of the prosecutrix.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that he is accused of heinous crime and date of birth of the prosecutrix was duly proved by the prosecution by leading cogent evidence and the arguments advanced on behalf of the petitioner are required to be rejected in view of age of the prosectrix.

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 06.09.2022 and the trial of the case has only reached halfway mark as only 08 out of 16 prosecution witnesses have 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*

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> *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 Jitender 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

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

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