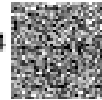
**CRM-M-24060-2024 (O&M)****1****205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-24060-2024 (O&M)****Date of decision: 17.05.2024****JAGDEEP MASIH @ DUNA****...PETITIONER****V/S****STATE OF PUNJAB****...RESPONDENT****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present:** Mr. Angel Walia, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG Punjab.

**********HARPREET SINGH BRAR J. (ORAL)**

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 74 dated 17.09.2023 registered under Sections 354/354-A of Indian Penal Code and Sections 7/8 of Protection of Children from Sexual Offences Act, 2012 (Section 10 of POCSO Act added later on) at Police Station Kalanaur, District Gurdaspur.

2. The FIR(supra) was registered on the statement of Amanpreet w/o Vikram Masih, wherein she has stated that she is a household lady and her husband is a truck driver. She has two children. Her daughter/prosecutrix was studying in 3rd Class at Dasmesh Model School, Bhandal. On 17.09.2023, it was Sunday and at about 12.30 PM, she had sent her daughter/prosecutrix to a grocery shop of the village to fetch coconut oil. After 10 to 15 minutes, her daughter/prosecutrix came back home and she was upset. Upon inquiry, her daughter/prosecutrix disclosed that the present petitioner, took her to the



backside of the school and started obscene acts with her and she saved herself from him and ran away towards the house.

3. Learned counsel for the petitioner *inter alia* contends that the case set up by the prosecution is highly improbable and too far fetched and petitioner has been falsely implicated in the present case as the petitioner and the complainant are residing in neighbourhood and there is old enmity between them and on account of said animosity, the present FIR has been registered. Place of occurrence as alleged by the complainant is the premises of the school in which CCTV cameras are installed, which was not taken into possession by the Investigating Officer, however, petitioner would rely upon the said CCTV footage at the time of leading his defence, which clearly shows that no such occurrence took place. It is further contended that even the medical examination of the prosecutrix was not conducted and the investigation of the case is complete.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that serious allegations have been levelled against the petitioner for committing heinous crime and there are sufficient evidence available on record to prove his complicity in the alleged occurrence.

5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner is behind the bars since 19.09.2023 and trial of the case is likely to take long time to conclude and not even a single prosecution witness has been examined so far. So further incarceration of the petitioner without there being the prospect of the

conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

6. 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 demo cracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

7. Accordingly, the present petition is allowed. The petitioner-Jagdeep Masih @ Duna is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate 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.

May 17, 2024
Ajay Goswami

(i) Whether speaking/reasoned

(ii) Whether reportable

(HARPREET SINGH BRAR)

JUDGE

Yes/No

Yes/No