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

CRM-M-24938-2024

Date of decision: 22.05.2024

Sumoon alias Samon

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Balwinder Singh Chahal, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

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.305 dated 07.12.2023 under Section 506 of IPC and Section 6 of POCSO Act registered at Police Station Ismailabad Kurukshetra, Haryana (Annexure P-1).

The FIR (*supra*) was lodged on the statement of the complainant/victim alleging that her elder sister was married in Ismailabad and with the consent of her parents, she went there to stay with her. The accused/petitioner is the relative of her sister and used to visit her house where the complainant met him. It is further alleged that on the pretext of marriage, the accused started establishing physical relations with the complainant and assured her that they will solemnize marriage after some time and kept exploiting her and threatening her. When the complainant told the petitioner that she is pregnant and they should solemnize marriage then he started making false allegations that the child does not belong to him. He also threatened to



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kill the complainant. When the complainant told her parents about all this, they requested the parents of the accused/petitioner to solemnize the marriage of their son with their daughter but they totally refused and, thus, the present FIR was registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner and the victim/complainant were in a consensual relationship and lacks any *mens rea*. They have performed marriage with each other and when she went for her medical examination in the Urban Primary Health Centre, Indra Colony, Karnal, she has mentioned her as wife of the petitioner as discernible from Annexure P-3. The statement of the victim/complainant has also been recorded as PW-2 in which she has submitted that she was staying at the house of the petitioner after solemnizing marriage with him and she does not want the petitioner to be punished and wants to stay with him.

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that at the time of the incident, the victim/complainant was less than 18 years of age, as such, the petitioner is not entitled to the concession 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



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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 10.12.2023. 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 04 out of 13 prosecution witnesses have been examined so far which includes examination of the victim/complainant as PW-2. 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-Sumoon @ Samon 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

22.05.2024
Neha

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