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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2115-2024 (O&M)
Date of decision: 02.07.2024

Surender

... Appellant

Vs.

State of Haryana

... Respondent

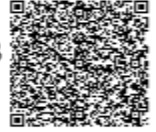
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Kusum Raj, Advocate
for the appellant.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present appeal has been preferred against the impugned order dated 04.05.2024 passed by learned Additional Sessions Judge, Karnal, vide which application for grant of regular bail to the appellant in FIR No.213 dated 10.08.2021 under Sections 363 & 366-A of the Indian Penal Code, 1860 (for short 'IPC') [Section 342 of IPC, Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Section 3(2)(5) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'SC&ST Act') were added later on], registered at Police Station Nigdhu, District Karnal, was dismissed.

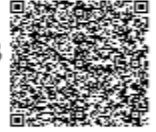


2. Brief facts of the case are that on 10.08.2021, the complainant-father of the victim made a complaint to the police station to the effect that his daughter 'M' (name withheld) left the house in the intervening night of 09/10.08.2021 and he has suspicion that Surrender has enticed her away on the pretext of marriage and prayed to trace out her daughter and for taking legal action against the accused.

3. Learned counsel for the appellant, *inter alia*, contends that there is no corroboration to the case set up by the prosecution. The prosecutrix has refused to undergo medical examination. It is further contended that the appellant has been falsely implicated and the victim-prosecutrix has herself left the house with her own sweet will and accompanied him. Even in her statement recorded under Section 164 Cr.P.C., she has not levelled any allegation breaching the threshold of offence under Section 376 of IPC. Moreover, all the material witnesses have not supported the case of the prosecution and learned Public Prosecutor has declared them hostile. The appellant is in custody since 03.03.2023 and is not involved in any other case.

4. Custody certificate dated 29.06.2024 of the appellant, filed in the Court today, is taken on record.

5. *Per contra*, learned State counsel opposes the prayer made by the appellant on the ground that age of the prosecutrix was 14 years and 09 months at the time of occurrence and she was recovered from company of the appellant. However, she could not controvert the fact that the appellant is

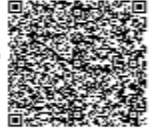


not involved in any other case and he has already undergone the custody of 01 year, 03 months and 27 days as on 29.06.2024.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the appellant is behind bars since 03.03.2023 and all the material witnesses have been declared hostile, as they have not supported the case of the prosecution. The culpability, if any, would be determined at the time of trial. Keeping the appellant 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.

7. 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.”

8. In view the above, present appeal is allowed and the impugned order dated 04.05.2024 passed by learned Additional Sessions Judge, Karnal is set aside. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, appellant Surender is ordered to be released on regular bail during trial, on his furnishing bail/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

9. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned trial Court shall proceed without being prejudiced by the observations of this Court.

02.07.2024

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**[HARPREET SINGH BRAR]
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No