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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26514-2024

Date of decision: 20.08.2024

Ambedkar alias Umedkar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Nirmal Singh, 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.8 dated 28.01.2023 under Sections 342/354/506 of IPC and Section 8 of POCSO Act (Section 8 of POCSO Act deleted later on and Section 6 of POCSO Act added later on) registered at Women Police Station Assandh, District Karnal.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 28.01.2023 at about 2 o'clock her victim/daughter had gone for hair cutting and *baithak* of the petitioner opens in the street and he forcibly dragged the victim/daughter of the complainant in his *baithak* and started molesting her. When she searched her, she saw that her daughter was present in the *baithak* of the petitioner and he had caught her. She raised noise and got freed her daughter. Thereafter, neighbours were gathered there and the petitioner fled away by extending threats to kill them and thus, the instant FIR got registered.



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Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and there is stark contradiction in the statements made by the victim and her mother while deposing as PW-1 and PW-2, respectively. Further, there is no corroboration of the case set up by the prosecution. Even in the MLR, nothing tangible has been found to substantiate the allegations of sexual assault. He further submits that the petitioner is behind the bars since 01.02.2023 and material witnesses have already been examined.

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 the victim/prosecutrix has supported the case of the prosecution and she has even reiterated her allegation in her statement made before the concerned jurisdictional Magistrate under Section 164 Cr.P.C.

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 age of the prosecutrix has not been proved in accordance with law, as such, whether any offence under the POCSO Act is made out or not is a moot point to be decided by the learned trial Court and the petitioner is behind the bars since 01.02.2023. 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 even reached half way mark as only 02 out of 11 prosecution witnesses have 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-Ambedkar alias Umedkar 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

20.08.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No