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

CRM-M-29045-2024

Date of decision: 02.07.2024

Saddam @ Saddam Hussain

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amritpal Singh, Advocate for
Mr. Balraj Singh Sidhu, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

This second petition has been filed under Section 439 Cr.P.C. seeking concession of regular bail in case bearing FIR No.204 dated 16.08.2022 under Section 346 of IPC (Sections 363/366/120-B/328/379/406/470 of IPC and Section 6 of POCSO Act added later on and Sections 328/371/346/379 of IPC deleted later on) registered at Police Station Sector 17/18, District Gurugram. The first bail application was dismissed as withdrawn on 14.11.2023.

The FIR (*supra*) was lodged on the allegations that on 16.08.2022, victim/daughter of the complainant, who was 17 years of age and was a student of class 12th in Senior Secondary School (at the time of occurrence), left the house at around 12:00 Noon without informing anyone and on search, he could not trace her and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. The date of birth of



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the prosecutrix has not been proved in accordance with law and she was major at the time of the occurrence. He further submits that the victim/prosecutrix travelled along with the petitioner to various places and stayed with him for almost two months and the same fact has been admitted by her in her statement recorded under Section 164 Cr.P.C. that she had gone with the petitioner with her own consent and the whole family of the petitioner, including his mother and sister, has been falsely implicated in the present case. The petitioner is behind the bars since 28.10.2022 and he is not involved in any other case.

The learned State counsel has filed the 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 he is the main accused and is involved in heinous crime. However, she could not controvert the fact that the petitioner is not involved in any other case.

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



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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 for 01 year 08 months as per custody certificate. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and the trial of the case has not even reached halfway mark as only 04 out of 17 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.

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-Saddam @ Saddam Hussain 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

02.07.2024

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