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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29077-2024

Date of decision: 30.07.2024

Raj Kumar alias Nishal

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Kumar Rana, 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.277 dated 24.05.2022 under Section 346 of IPC (Sections 376(2)(n)/406/506/323/201 of IPC added later on) (Section 346 of IPC deleted later on) registered at Police Station Saran, Faridabad (Annexure P-1).

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 20.05.2022, his wife and children left home without telling him and did not return. It is further alleged that his wife had also taken 09 *tolas* of gold, 300 grams of silver and Rs.1.73 lakh in cash along with her and thus, the instant FIR was registered.

Learned counsel for the petitioner *inter alia* contends that initially the complaint was made on 20.05.2022 with regard to missing of the wife and daughters of the complainant and on the basis of the same, the FIR (*supra*) was registered on 24.05.2022. On 25.05.2022, when the wife and daughters of the complainant were found, the complainant has filed a written application before



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the jurisdictional police authorities that he has given the complaint on the basis of doubt against the petitioner and in fact, his wife had gone to his uncle's house and as such, he has submitted that he does not intend further action in the matter. Copy of the application submitted by the complainant is available on record as Annexure P-2. He further submits that there is stark contradiction between the statement of the prosecutrix recorded under Sections 161 Cr.P.C. and Section 164 of Cr.P.C. It is further submitted that the petitioner is behind the bars since 31.05.2022 and in spite of issuance of summons to the prosecution witnesses, they are not coming forward to depose.

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 of gravity of offence and she further submits that the petitioner is the main accused, as such, he is not entitled to the concession of regular bail, however, she could not controvert the fact that the petitioner is not involved in any other case and has already undergone total sentence 02 years 01 month and 28 days as on 27.07.2024.

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."

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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 31.05.2022 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 03 out of 14 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-Raj Kumar @ Nishal 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

30.07.2024*Neha*

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