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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-28778-2024 (O&M)
Date of decision: 02.09.2024

Ashok Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gaurav Singla, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking regular bail in case bearing FIR No.193 dated 23.10.2023 under Sections 10 & 12 of the Protection of Children from Sexual Offences Act, 2012 and Sections 365 & 354-A of the Indian Penal Code, 1860 (added later on as per chargesheet), registered at Police Station Tigaon, District Faridabad.
2. The present FIR was registered on the basis of an application given by father of the prosecutrix, on the allegations that he is doing the

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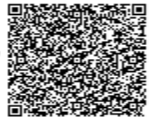


labour work and has three children; two sons and one daughter, aged about 05 years. On 23.10.2023, on the pretext of providing some eatables, the petitioner, who is son of his uncle, took his daughter to his house and he asked her to touch his penis at her private part, but she refused to do so. When she returned to home, his daughter told about the incident. He has apprehension that some wrong can be happened with his daughter.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. There is no corroboration to the case set up by the prosecution. In fact, the petitioner and the complainant are cousin brothers and they are doing the labour wok. The petitioner is father of two daughters and there was a monetary dispute between him and the complainant. The arguments ensued between them, when the petitioner demanded his money back. Now with the intervention of common relatives, a compromise has been effected between the petitioner and the complainant and affidavit of the complainant is attached with the present petition as Annexure P-2. It is further contended that the petitioner is behind bars since 10.01.2024 and he is not involved in any other case and investigating agency has already concluded the investigation.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that there are serious allegations against the petitioner and keeping in view gravity of offence, he is not entitled to regular bail. Learned State counsel produces the custody

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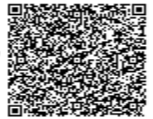
certificate dated 01.09.2024 of the petitioner and status report by way of affidavit of Jitesh Kumar, HPS, Assistant Commissioner of Police, Tigaon, in the Court today, which are taken on record. However, she could not controvert the fact that the petitioner is not involved in any other case.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind bars since 10.01.2024 and the trial of the case has not even reached halfway mark as only 02 out of 10 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.

6. 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

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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.”

7. In view the above, present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner Ashok Kumar is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

8. 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

02.09.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No