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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29485-2024 (O&M)
Date of decision: 16.07.2024

Hari Sharan @ Hari

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kamal Kumar Mor, Advocate and
Mr. Ajay Patter, 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 seeking regular bail in case bearing FIR No.508 dated 07.07.2023 under Section 6 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Sector 8, Faridabad, District Faridabad.
2. The present FIR was registered on the statement of the prosecutrix 'R' (name withheld) on the allegations that she has studied upto 6th Class and used to work in kothis along with her mother. They are six brothers and sisters. The petitioner was residing in her neighbourhood.



About five months ago, the petitioner called her in his office in YMCA and she went there at about 08.30 a.m. and he developed physical relations with her without her consent. After one and half month, the petitioner again called the prosecutrix in his office and developed physical relations with her against her wish. After some days, the petitioner, without any information to the prosecutrix, went somewhere. Since the prosecutrix was not having periods for the last 3-4 months, she told the entire incident to her mother and she took her to the doctor, who declared the prosecutrix as pregnant. Thus, a request was made to take action against the petitioner.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is behind bars since 08.07.2023 and is not involved in any other case. He has been falsely implicated in the present case. The prosecutrix was in consensual relationship with the petitioner and both of them had performed marriage before registration of the FIR and they have been blessed with a child, which is being brought up by family members of the petitioner. The relationship between the petitioner and the prosecutrix was devoid of any *mens rea*. The prosecutrix and her mother have been examined as PW1 and PW2, respectively and they have not supported the case of the prosecution, therefore, learned Public Prosecutor declared them hostile. Moreover, there is no proof available on record to prove that the prosecutrix was below 18 years of age at the time of incident. In her deposition, the prosecutrix categorically stated that she is major.

4. *Per contra*, learned State counsel opposes the prayer for grant of

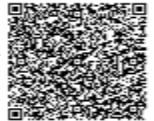


regular bail to the petitioner on the ground that there are serious allegations against the petitioner and he sexually exploited the prosecutrix, who was below 18 years of age. He produces the custody certificate dated 15.07.2024 in the Court today, which is taken on record. However, she could not controvert 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 08.07.2023 and he is not involved in any other case and the prosecutrix and her mother, who appeared as PW1 and PW2, respectively, 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 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 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 Hari Sharan @ Hari 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**

16.07.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No