

2024:PHHC:113427



203

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29913-2024 (O&M)
Date of decision: 02.09.2024

Bharat Khattar

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ram Bilas Gupta, 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.118 dated 19.07.2023 under Sections 506 & 509 of the Indian Penal Code, 1860 (for short 'IPC'), Section 12 of the Protection of Children from Sexual Offences Act, 2012 and Sections 67 & 67-B of Information Technology Act, registered at Police Station Women, NIT, Faridabad.

2. The present FIR was registered at the instance of complainant-

2024:PHHC:113427



victim, on the allegations that she was studying in Class IX in a school and her friends 'I' (name withheld) was residing in her neighbourhood, who was studying in a different school. She had created an ID i.e. g.e.e.t_12 in the name of her friends on Instagram and accepted the request received from an ID i.e. pvt-ishika12. Thereafter, she received obscene messages and images from that ID w.e.f. 15.07.2023 and that person asked her to arrange his talk with her friend 'I'. On 19.07.2023, her friend 'I' had a talk with that person on Instagram, which she had arranged. That person threatened her to arrange his talk with 'I', otherwise he would make her photo viral and also threatened to kill her, if she inform about this to anyone.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case without verifying the facts and circumstances of the case. During investigation, the petitioner was not arrested, as maximum sentence provided for the offences, under which the FIR (*supra*) is registered, is upto 07 years and he fully cooperated with the investigating agency. The petitioner is in custody for the last 11 months and 04 days and now the complainant-victim has already been examined by learned trial Court, in which she took inconsistent stand.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner created a fake ID and he had been sending obscene material. The petitioner is a habitual offender involved in one more case. Learned State counsel produces the

2024:PHHC:113427



custody certificate dated 30.08.2024 of the petitioner in the Court today, which is taken on record.

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 for the last 11 months and 04 days as on 30.08.2024 and the trial of the case has not even reached halfway mark, as only 01 out of 18 prosecution witnesses has 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 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

2024:PHHC:113427



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 Bharat Khattar 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