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

CRM-M-29958-2024 (O&M)

Date of decision: 16.09.2024

Shivam

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Parveen Kumar, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, 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.780 dated 09.10.2023 under Sections 34/363/366/506 of IPC and Section 4 of POCSO Act, registered at Police Station Indri, District Karnal, Haryana.

The FIR (*supra*) was lodged on the statement of complainant that on 09.10.2023, his daughter, namely, Shivani, got disappeared from his house and in this case three boys are involved, namely, Ankit, Shivam (the petitioner herein) and Dipanshu. It is further alleged that at around 11 o'clock, Ankit had taken away his daughter from his house and, thus, the present FIR was registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner along with co-accused, namely, Ankit, has been accused of kidnapping the prosecutrix and sexually exploited her on gun point. The CCTV footage of the relevant time indicates that daughter of the complainant has herself taken lift from co-accused-Ankit and voluntarily sat on his bike. It is also clearly

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visible in the CCTV footage that the co-accused has stopped his bike after the prosecutrix has signalled him to stop and the prosecutrix walked over and sat on his bike. However, the Investigating Officer has not taken the CCTV footage into possession during the investigation, however, the petitioner would produce the same at the time of leading his defence. Further, the allegation with regard to exploiting the prosecutrix at gun point is also false as the Investigating Agency has not presented the final report under the provisions of Arms Act and even no charge under the Arms Act has been framed. He further submits that the age of the prosecutrix has not been proved in accordance with law and it would be a moot point to be decided by the learned trial Court whether the prosecutrix was minor at the time of the incident or not. It is further submitted that the co-accused, namely, Ankit has been granted the concession of regular bail by this Court vide order dated 16.05.2024 passed in CRM-M-23697-2024 titled as 'Ankit Vs. State of Haryana and another.' Further, on the last date of hearing i.e. 04.07.2024, the learned State counsel sought an adjournment for the examination of the prosecutrix by the learned trial Court and the petitioner is behind the bars for almost one year and not even a single witness has been examined so far.

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 that victim is minor and there are serious and specific allegations against the petitioner and the prosecutrix has reiterated her allegations against the petitioner in her statement recorded under Section 164 Cr.P.C. However, he 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 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 since 14.10.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court, charges were framed and trial of the case has not made much progress as there are 16 prosecution witnesses and none has 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

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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-Shivam 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

16.09.2024*Neha*

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