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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30733-2024 (O&M)

Date of decision: 03.07.2024

Mahesh

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Saurabh Dalal, 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.315 dated 12.07.2022 under Sections 363/366/506 of IPC and Section 6 of POCSO Act, registered at Police Station Bilaspur, District Gurugram.

The FIR (*supra*) was lodged on the allegations that daughter of the complainant, namely, Sujata, aged 16 years, who studied in Class 8th looked scared for many days and did not tell anything to him. It is further alleged that she told the complainant that a boy named Mahesh, used to rape her for the last two months by threatening her to kill her whole family. On 08.07.2024, the accused/petitioner kidnapped her and on search, the complainant could not trace her and again on search, he found her on 09.07.2024 at Bilaspur Chowk and, thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that there is no evidence to connect the petitioner with the alleged crime. The medical



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evidence as well as the RFSL report does not support the case set up by the prosecution and the petitioner is behind the bars since 13.07.2022 and till date only two witnesses out of 24 have been examined. He further submits that the complainant has already been examined and the delay in the trial is not attributable to the petitioner which violates the right of the petitioner under Article 21 of the Constitution of India.

The learned State counsel has filed the 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 he is the main accused who is involved in heinous crime and there are specific allegations against him. However he could not controvert the fact that the petitioner is not involved in any other case and has already been in custody for almost 02 years.

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 for 01 year 11 months and 20 days 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 09 out of 24 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.

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-Mahesh 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

03.07.2024
Neha

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