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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30391-2024 (O&M)
Date of decision: 04.07.2024

Rinku

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tarun, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

CRM-25630-2024

1. Present application has been filed under Rule 3-A(i) of Chapter 6 Part B Volume V of the High Court Rules and Orders for grant of leave to file and argue the present petition.

2. In view of the averments made in the application, same is allowed and leave sought is granted.

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3. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 read with Section 12 of Juvenile Justice



(Care and Protection of Children) Act, 2015 seeking regular bail in case bearing FIR No.178 dated 13.05.2022 under Sections 363, 365, 366-A of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Gandhi Nagar, District Yamuna Nagar.

2. The present FIR was registered at the instance of complainant/mother of the prosecutrix, on the allegations that she is having four children i.e. two sons and two daughters. On 12.05.2022 at about 10.00 a.m., her daughter 'S' (name withheld), who is 17 years of age, left the house without informing her. She was wearing a brown coloured salwar kameez and slippers and has a scar on right side of her chin. One boy namely Rinku, who is residing in the vicinity of her house, had also not been seen since 12.05.2022. The complainant requested to find her daughter.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is suffering from "Macrocytic Anemia" and he requires medical treatment and in the absence of medical treatment, his life could be in danger. It is further contended that the petitioner is juvenile and date of birth of the victim-prosecutrix has not been proved in accordance with law. Although all the witnesses have been examined, but FSL report and DNA report still have not been submitted before learned trial Court by the investigating agency. As such, the petitioner is suffering due to delay in trial attributable to the prosecution. The petitioner is behind bars since 16.05.2022.



4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner is main accused and he has committed heinous crime. However, she could not controvert the fact that FSL report pertaining to DNA examination of the petitioner has not been furnished before learned trial Court till date and 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 16.05.2022 and the investigating agency, in spite of passing of two years from the date of registration of FIR (*supra*), has not been able to furnish the FSL report pertaining to DNA examination of the petitioner before learned trial Court, which would certainly affect the progress of the trial and no fault can be fastened upon the petitioner for the delay in trial. 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 Rinku 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

04.07.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No