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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30474-2024 (O&M)
Date of decision: 04.07.2024

Deepu

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. J.S. Dadwal, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG Punjab with
Mr. Sandeep Kumar, DAG, Punjab.

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.0058 dated 18.07.2023 under Sections 363 & 366-A of the Indian Penal Code, 1860, registered at Police Station Daba, District Ludhiana.
2. The present FIR was registered on the basis of statement of complainant on the allegations that she is working in a factory and is having seven children; five sons and two daughters. Her daughter 'M' (name withheld), whose date of birth is 21.08.2007, was studying in Govt. School, Ludhiana and due to the vacations, she was at home. On 13.07.2023, when



the complainant went to work, 'M' along with minor children was at home, at about 08.00 p.m., her son told her that 'M' had gone somewhere with one of her friend 'N' and did not return back to home. The complainant went to house of 'N', where her brother met her and told that 'N' was also missing from home and her age was 17 years and 06 months. Thereafter, the complainant and brother of 'N' searched for 'M' and 'N', but they were not found. Later on, the complainant came to know that on the pretext of marriage, by enticing them, petitioner Deepu took away 'M' and another boy Mehnga took away 'N'. Both the petitioner and Mehnga are friends. The complainant and brother of 'N' were searching, but could not find 'M' and 'N'. Thereafter, the matter was reported to the police.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. The FIR (*supra*) was registered after a delay of 05 days from the date of alleged incident. There is nothing on record to corroborate the case set up by the prosecution. The prosecutrix was produced before the concerned jurisdictional Magistrate and her statement under Section 164 Cr.P.C. was recorded, in which it is stated that she left her house at her own will and she had not made any allegation against the petitioner. It is further contended that the petitioner is behind bars since 19.07.2023 and he is not involved in any other case. The trial of the case has made no progress, as till date not even a single witness has been examined and delay in the trial violates the fundamental right of the petitioner enshrined under Article 21 of the Constitution of India.



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 there are serious allegation against him. However, he could not controvert the fact that the petitioner is not involved in any other case. He produced the custody certificate dated 03.07.2024 in the Court today, which is taken on record. As per this custody certificate, the petitioner is in custody for the last 11 months and 12 days.

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 19.07.2023 and the trial of the case has not made any progress, as no prosecution witness has been examined till date. 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 Deepu 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.

04.07.2024

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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No