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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30657-2024 (O&M)
Date of decision: 02.07.2024

Nitin

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pradeep Chhoker, 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 seeking regular bail in case bearing FIR No.7 dated 14.01.2023 under Section 376(2) of the Indian Penal Code, 1860 (for short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), registered at Police Station Bapoli, District Panipat. (final report under Section 173 (2) Cr.P.C. was filed under Section 376(1) of IPC and Section 6 of POCSO Act).

2. The present FIR was registered on the basis of an application given by the complainant to the police station, on the allegations that she is

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having two children and her daughter-victim is 16 years old. On 13.01.2023, at about 12.15 a.m., when she along with her children were sleeping at home and her husband had gone to visit his sister, the victim went to bathroom, where petitioner Nitin was standing and he committed wrong act with her daughter-victim. Due to fear, the victim did not disclose the incident in the night and in the day, she narrated the entire incident to her mother/complainant. After returning of her husband, the complainant further narrated the entire incident to him. With these allegations, FIR (*supra*) was registered.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. At the time of occurrence, he was a juvenile and there is no material available on record to corroborate the case set up by the prosecution. He further contends that all the material witnesses including the prosecutrix and the complainant have not supported the case of the prosecution, therefore, learned Public Prosecutor declared them hostile and relies upon their depositions made before learned trial Court, which are available on record as Annexures P-2 to P-4. He also contends that the petitioner is behind bars since 16.01.2023 and he is not involved in any other case.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that there is sufficient material apart from depositions of the witnesses to indicate complicity of the petitioner in the alleged incident. She produced the custody certificate dated



01.07.2024 of the petitioner in the Court today, which is taken on record. However, she could not controvert the fact that 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 for the last 01 year, 05 months and 16 days as on 01.07.2024 and all the material witnesses, including the complainant and the prosecutrix have been declared hostile, as they have not supported the case of the prosecution. 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 Nitin 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

02.07.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No