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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32571-2024 (O&M)
Date of decision: 16.07.2024

Sukhpal Singh @ Sukha

... Petitioner

Vs.

State of Punjab

... Respondent

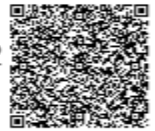
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashish Aggarwal, Advocate
for the petitioner.

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.64 dated 28.04.2023 under Sections 363, 366-A of the Indian Penal Code, 1860 (Sections 376, 201 of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 added later on), registered at Police Station City Patti, District Tarn Taran.
2. The present FIR was registered on the statement of 'R' on the allegations that she is having five children from her husband Tarsem Singh, who expired in the year 2015. The elder child is the prosecutrix 'H' (name



withheld) and other children are younger to her. The complainant performed second marriage with Mukha Singh and out of this wedlock, one daughter was born. On 25.04.2023 at about 07.00 p.m., her daughter 'H' went to Gurudwara for paying obeisance, but she did not return to home. The complainant searched for her daughter 'H' at her own level. She was fully confident that her daughter 'H' was enticed away by the petitioner on the pretext of marriage.

3. Learned counsel for the petitioner, *inter alia*, contends that the complainant is biological mother of the prosecutrix and after death of her husband, she performed second marriage and the prosecutrix was living in orphanage for the last 07 years. There is nothing on record to suggest that the prosecutrix was sexually exploited. In this regard, learned counsel relies upon the Medico-legal Report of the prosecutrix (Annexure P-2). It is further contended that the prosecutrix has already been examined by learned trial Court and while deposing, she has not supported the case of the prosecution, therefore, learned Public Prosecutor declared her hostile. The petitioner is behind bars since 28.04.2023 and 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 are serious and specific allegations against the petitioner. The prosecutrix levelled specific allegations in her statement recorded by learned jurisdictional Magistrate under Section 164 Cr.P.C. and she has duly identified the petitioner, while deposing in the Court.

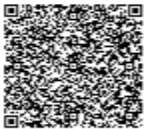


5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind bars since 28.04.2023 and the trial of the case has not even reached halfway mark as only 07 out of 17 prosecution witnesses have been examined 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.

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 Sukhpal Singh @ Sukha 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

16.07.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No