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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32886-2024

Date of decision: 17.07.2024

Tasleem alias Tassi

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. T.S. Grewal, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, 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.452 dated 06.09.2023 under Section 6 of POCSO Act and Section 323 of IPC (Sections 34/363/452 of IPC deleted later on) registered at Police Station City Sohana, District Gurugram Haryana.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on the previous night i.e. on 06.09.2023 at about 03:00/04:00 A.M., his daughter/victim aged 16 years (at the time of occurrence) was abducted by some persons residing in their neighbourhood, namely, Nasir, Tassi @ Taslim (the petitioner herein), Ashif and two unknown persons all residents of Village 'R' and taken her away to the house of co-accused-Taiyab and committed gang rape upon her and, thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the case set up by the prosecution is highly improbable and different versions at different times have been given. Initially, the petitioner was named along with

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Ashif and Nasir and when the prosecutrix was examined under Section 164 Cr.P.C., she named two more persons, namely, Mausim and Mustakim, and the prosecutrix falsify the version contained in the FIR and rather contradicts it. Right from the inception, different versions are projected by the witnesses. Learned counsel further relies upon the medico legal report of the prosecutrix (Annexure P-3) to submit that there is nothing in the medical report as well which would suggest that the prosecutrix was subjected to a forcible sexual intercourse and there is nothing available on record to prove the age of the petitioner and the prosecution has withheld the primary entry with regard to the age of the petitioner. He further submits that there are two documents which are part of the proofs i.e. School Leaving Certificate and the Aadhar Card which are different from the ones available on record as Annexure P-6 & P-8. It is further submitted that the petitioner and the family of the prosecutrix are living in the same neighbourhood and there is family feud due to which the present FIR was registered. Reliance in this regard is placed on Annexures P-9 & P-10 i.e. the applications given to the Deputy Collector, Gurugram and Police Commissioner, Gurugram, respectively, by father of the petitioner and the prosecutrix has already been examined by the prosecution.

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 the petitioner is the main accused and there are serious and specific allegations against the petitioner which were duly reiterated by the prosecutrix in her statement under Section 164 Cr.P.C and also while deposing before the learned trial Court, however, she could not controvert the fact that the petitioner is not involved in any other

case.

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 the last 09 months and 19 days as per custody certificate. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as only 03 out of 19 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. 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-Tasleem alias Tassi 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

17.07.2024
Neha

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