

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-34411-2024
Date of decision: 25.07.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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.11 dated 20.01.2024 under Section 365 of IPC and Section 6 of POCSO added later on registered at Police Station Ismailabad, District Kurukshetra.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 19.01.2024, her daughter/victim slept along with her and in the morning of 20.01.2024, she was missing. She has searched her everywhere but could not trace her. It is further alleged that she checked the mobile of her daughter in which calls of Rupinder (the petitioner herein) were received and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner and the victim/prosecutrix were in a consensual relationship which was opposed by the complainant and due to her opposition, she eloped with the petitioner. Even as per the case set up by the prosecution, age of the prosecutrix is around 17 and half years of age and her age is yet to be proved in



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accordance with law and it would be a moot point to be determined by the learned trial Court whether the petitioner is liable for any offence breaching the threshold of Section 6 of POCSO Act. As per the prosecution case, the prosecutrix travelled from Kurukshetra to Bathinda and she never resisted and age of the petitioner was 19 years at the time of the incident. The proximity in the age between the petitioner and the prosecutrix warrants lenient view.

The learned State counsel has filed 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 consent of the prosecutrix is immaterial as she was minor at the time of incident, 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 since 30.01.2024. 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 out of 23 prosecution witnesses none has been



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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-Rupinder Singh 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

25.07.2024
Neha

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