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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34730-2024 (O&M)
Date of decision: 31.07.2024

Hardev Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amrit Paul Nahar, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking regular bail in case bearing FIR No.41 dated 23.08.2023 under Section 354, 354-A, 509 of the Indian Penal Code, 1860 (for short 'IPC') and Section 12 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Patara, District Jalandhar.

2. The present FIR was registered on the basis of a complaint given by father of the prosecutrix, on the allegations that his daughter namely 'A'

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was studying in Class 12th, where the petitioner was working as Teacher. The petitioner sent a video to his daughter on her mobile and he also did obscene acts with other girls of the class and also harass other Teachers. Thereafter, the petitioner made calls to daughter of the complainant again and again during night to have bad talks and even in the class period, he did obscene acts and gestures. On being annoyed by the petitioner, everything was told by daughter of the complainant to him. Thereafter, it was prayed that necessary legal action be taken against the petitioner.

3. Learned counsel for the petitioner, *inter alia*, contends that perusal of FIR (*supra*) indicates no date or place has been mentioned as to when and where the petitioner committed the alleged offence and the whole prosecution story is concocted. The petitioner is behind bars since 23.08.2023 and he is not involved in any other case; investigating agency has already concluded the investigation and maximum sentence provided for the offences, under which the FIR (*supra*) is registered, is upto 05 years.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner being Teacher has sexually harassed the minor daughter of the complainant and she reiterated the allegations in her statement recorded under Section 164 Cr.P.C. by the jurisdictional Magistrate and as such, he is not entitled to regular bail. Learned State counsel produces the custody certificate dated 30.07.2024 in the Court today, which is taken on record. He could not controvert the fact

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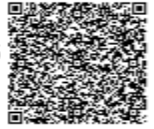
that the petitioner is not involved in any other case and he is in custody for the last 11 months and 06 days as on 30.07.2024.

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 in custody for the last 11 months and 06 days as on 30.07.2024; he is not involved in any other case and the trial of the case has not even reached halfway mark as only 04 out of 15 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

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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 Hardev Singh 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

31.07.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No