

208

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34823-2024 (O&M)
Date of decision: 31.07.2024

Ishwar Singh

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Narinder S. Lucky, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

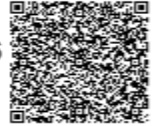
1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking regular bail in case bearing FIR No.128 dated 04.05.2024 under Sections 354A(1)(i), 452 of the Indian Penal Code, 1860 (for short 'IPC') and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') (later on Section 452 of IPC and Section 10 of POCSO Act added), registered at Police Station Bhuna, District Fatehabad.
2. The present FIR was registered on the basis of a complaint made



by father of the prosecutrix, on the allegations that he has six daughters and one son. On 04.05.2024, at about 01.30 p.m., the petitioner came to his house and after having talk with him, he went to the room, where his daughters 'S' and 'M' were sleeping. The petitioner gave Rs.50/- to his daughter 'M' and sent her to shop for taking some eatable and on finding her alone in the room, with bad intention, he started moving his hand on the waist of his daughter 'S'. He heard that his daughter 'S' was crying, then he went to the room and saw that the petitioner was moving his hand on the body of his daughter 'S'. The complainant gave fist and slaps to the petitioner and thereafter, he fled away from the spot.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case due to monetary dispute between the petitioner and the complainant, who had borrowed Rs.35,000/- from the petitioner and was not returning the same on being demanded by the petitioner and heated words were exchanged between them. After due consultation, the petitioner was implicated in a false case. Moreover, the maximum sentence provided for the offences, under which the FIR (*supra*) is registered, is upto 07 years. The investigating agency has already concluded the investigation and presented the final report under Section 173 Cr.P.C. The petitioner is behind bars since 06.05.2024 and has clean antecedents.

4. *Per contra*, learned State counsel opposes the prayer for grant of

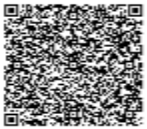


regular bail to the petitioner on the ground that the petitioner touched the minor daughter of the complainant inappropriately.

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 06.05.2024 and the trial of the case will take long time in its conclusion, as none out of 11 prosecution witnesses has 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 Ishwar 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