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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35425-2024 (O&M)
Date of decision: 31.07.2024

Karan

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Abhilaksh Grover, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

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.315 dated 23.06.2023 under Sections 363, 366-A, 342 of the Indian Penal Code, 1860 (for short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), registered at Police Station Saran, Faridabad.
2. The present FIR was registered on the basis of a complaint moved by the complainant, on the allegations that he had seven children; two

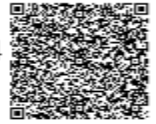


sons and five daughters. The prosecutrix is 15 years old and the petitioner is residing in his neighbourhood and he allured his daughter-prosecutrix and performed marriage with her. He forcibly developed physical relation with her.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner and the prosecutrix fell in love with each other and their relationship was opposed to father of the prosecutrix and both of them eloped and performed marriage. He further contends that primary entry with regard to date of birth of the prosecutrix has not been brought on record by the investigating agency to prove the actual age and only a school certificate is there. As such, the petitioner cannot be held liable for the offence under Section 6 of POCSO Act. During the trial, the complainant was examined and she did not support the case of the prosecution, therefore, learned Public Prosecutor declared her hostile. He also contends that the petitioner and the prosecutrix are neighbours. Even the prosecutrix in her statement recorded under Section 164 Cr.P.C. admitted the factum of marriage with the petitioner.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that minor daughter of the complainant has been sexually exploited by the petitioner.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the

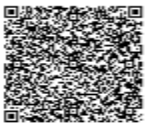


petitioner is in custody for the last 01 year, 01 month and 03 days as on 29.07.2024 and he is not involved in any other case and it will take long time in conclusion of the trial. The culpability, if any, would be determined at the time of trial. Keeping the petitioner in further detention without the 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 Karan 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