

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

Date of decision: 01.08.2024

....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.708 dated 08.06.2022 under Sections 346/363/366-A/376(2)(n) of IPC and Section 6 of POCSO Act registered at Police Station Hisar Sadar, Hisar.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that during the night of 07.06.2022 his eldest daughter left her home without informing to anyone and she also took mobile phone with her. He searched her everywhere but could not trace her and thus, the instant FIR was registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. The victim/prosecutrix was produced before the jurisdictional Magistrate after she was traced by the Investigating Officer and her statement was recorded under Section 164 Cr.P.C. In her statement, she has categorically stated that she has voluntarily left with the petitioner and the petitioner has not committed any



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wrong act. He further contends that even in the FSL report, nothing has been detected to indicate the complicity of the petitioner and he further relies upon the statement recorded under Section 164 Cr.P.C. (Annexure P-2) and FSL report (Annexure P-3). He further submits that the petitioner is behind the bars for more than 02 years and 01 month and he is not involved in any other case. On the basis of evidence collected during investigation, it can be safely concluded that no offence under the provisions of Section 6 of POCSO Act and Section 376 (2)(n) of IPC is made out and it would be a moot point to be determined by the learned trial Court.

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 has enticed away the minor daughter of the complainant and her age at the time of incident was only 15 years. She further submits that the petitioner is the main accused and there are specific & serious allegations against him, as such, he is not entitled to the relief of regular bail. 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 02 years 01 month and 18 days as per custody certificate. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and the trial of the case has not even reached halfway mark as only 04 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-Sandeep 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

01.08.2024

Neha

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No