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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35558-2024 (O&M)
Date of decision: 31.07.2024

Tanjeel

... Petitioner

Vs.

State of Haryana

... Respondent

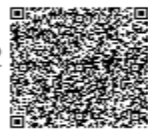
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Naveen Bawa, 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.480 dated 27.08.2023 under Sections 376(2)(n) & 506 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Industrial Sector 29, District Panipat.
2. The present FIR was registered on the basis of complaint moved by the complainant-victim, on the allegations that she fell in love with the petitioner and one day, he allured her and took her to his house to perform



marriage, but kept her at Kishanpura in a rented accommodation without solemnizing marriage. On coming to know about this incident, family members of the prosecutrix made a complaint to the police station. However, the petitioner, on the pretext of marriage, was having physical relations with her. Whenever she became pregnant from the petitioner, he used to administer medicine to abort the foetus and assured to have a child after the marriage. After attaining the age of majority, when the complainant-prosecutrix asked the petitioner to perform marriage, he, in collusion with his Advocate namely Noorjahan, obtained her signatures on blank papers and told her that they will solemnize the marriage clandestinely. Thereafter, they performed marriage and got her signatures on forged nikahnama and told her that now they will reside in a separate house. The petitioner took her to Royal Hotel, where he made physical relations with her against her consent. The petitioner in collusion with his Advocate had done all this in order to avoid his liability against the complaint lodged against the petitioner. Whenever the complainant-prosecutrix asked Advocate of the petitioner, she assured to perform her marriage with the petitioner. On 21.03.2023, in the chamber of Advocate of the petitioner, it was agreed between the complainant-prosecutrix and the petitioner that after getting repaired his Noorwala house, he would take her along with him. Thereafter, on asking of his Advocate, the petitioner took the complainant-prosecutrix for outing and they stayed in a room near Royal Hotel. On being insecure with the



conversation between them, the petitioner had a scuffle with the complainant-prosecutrix and she refused to have physical relation with him before marriage, but the petitioner, without her consent, established physical relation with her 2-3 times. When the petitioner tried to insert his private part in her mouth, the complainant-prosecutrix became angry, thereupon, the petitioner forced himself upon her and committed unnatural intercourse with her, due to this, she became unconscious and after gaining consciousness, she saw that the petitioner was nervous and he gave water to her to drink. When the complainant-prosecutrix told about this incident to Advocate of the petitioner, she asked the complainant-prosecutrix to remain quite. Thereafter, the complainant-prosecutrix blocked the mobile number of the petitioner. On the request made by the petitioner to unblock his mobile number, by calling from some another number, the complainant-prosecutrix unblocked his mobile number and he refused to take her along with him. The petitioner also extended threats to the complainant-prosecutrix. She made a thought to commit suicide. The petitioner and his Advocate spoiled her life. Thus, a prayer was made to take legal action against the petitioner.

3. Learned counsel for the petitioner, *inter alia*, contends that earlier, mother of the complainant-prosecutrix lodged an FIR No.669 dated 15.07.2018 under Sections 354-A & 509 of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') against the petitioner and he was convicted in the aforementioned FIR



by learned Additional Sessions Judge/Fast Track Court (POCSO), Panipat on 04.11.2023. Thereafter, when the complainant-prosecutrix attained the age of majority, she had levelled similar allegations of sexual exploitation on the pretext of marriage, against the petitioner. Learned counsel for the petitioner submits that on the same set of allegations, second FIR is not sustainable and he relies upon judgment of the Hon'ble Apex Court in ***T.T. Antony Vs. State of Kerala, Criminal Appeal No.689 of 2001 (arising out of SLP (Crl.) No.1522 of 2000, decided on 12.07.2001***. The petitioner is behind bars since 05.04.2024 and there is no corroboration by any medical evidence to the case set up by the prosecution, as the complainant-prosecutrix refused to undergo medical examination. The investigation is complete and final report under Section 173 Cr.P.C. has been presented and charges are yet to be framed.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner has sexually exploited the complainant-prosecutrix on the pretext of marriage.

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 05.04.2024 and the trial of the case will take long time in its conclusion, as none out of 12 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.

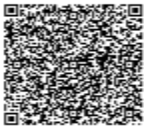
6. A two Judge Bench of the Hon'ble Supreme Court in ***Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed as under: -

“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 Tanjeel 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

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of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

31.07.2024
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[HARPREET SINGH BRAR]
JUDGE

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