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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35389-2024 (O&M)
Date of decision: 31.07.2024

Rahul

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Namit Khurana, 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.463 dated 25.12.2023 under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Sections 323, 452, 506 of the Indian Penal Code, 1860 (for short 'IPC') (Section 6 of POCSO Act was deleted and Section 4 of POCSO Act was added later on), registered at Police Station Ram Nagar, District Karnal.
2. The present FIR was registered on the basis of a complaint

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moved by father of the victim, on the allegations that petitioner Rahul was his friend and they had family relations. On 24.12.2023, when he was at home, he found that his daughter was crying in her room. On his and his wife's asking, his daughter told that on 10.11.2023 at 11.00 a.m., when she called to her uncle/petitioner to revert back to his missed call received at 06.00 a.m. on the same day, he told her to come to his house on the pretext of some urgent work. At 12.00/12.30 o'clock, she reached at his house. He was under the influence of liquor and bolted the room and gave slaps to her and by catching hold of her hair, he took her to another room. On making noise, he again slapped her and committed rape upon her. He threatened her not to disclose about the incident to anyone. Thereafter, she left for her tuition. Due to fear, she did not disclose anything to her parents. On next day, the petitioner called to the prosecutrix and apologized. Yesterday, the petitioner came to their house and his daughter was alone in the room. The petitioner threatened her that he had made video of above incident and wanted to establish physical relation with her again and threatened to viral the video, if she would refuse to do so. His daughter played an audio recording and showed photographs of the injuries.

3. Learned counsel for the petitioner, *inter alia*, contends that there is a delay of 45 days in registration of FIR (*supra*) and there is no medical evidence available on record to corroborate the allegations with regard to rape. In fact, the petitioner and the prosecutrix were in consensual

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relationship. The prosecutrix was major and the facts have been twisted to aggravate the offence to invoke the provisions of POCSO Act. The petitioner is behind bars since 26.12.2023 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 has sexually exploited minor daughter of the complainant and keeping in view gravity of the offence, the petitioner is not entitled to regular bail. Learned State counsel produces the custody certificate dated 29.07.2024 in the Court today, which is taken on record. However, she could not controvert the fact that the petitioner is not involved in any other case.

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 07 months and 04 days as on 29.07.2024 and the trial of the case will take long time in its conclusion, as none out of 16 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 Rahul 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