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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-36388-2024 (O&M)
Date of decision: 05.08.2024

Amarbir Singh @ Rubal @ Rubal Chandigarhia

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. Rishu Mahajan, Advocate
for the complainant.

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.06 dated 09.01.2024 under Section 376 of the Indian Penal Code, 1860 (for short 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station

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Jandiala, District Amritsar Rural.

2. The present FIR was registered on the basis of complaint moved by complainant 'R' (name withheld), on the allegations that the petitioner was residing in the vicinity and they became friends through Instagram in the year 2020, when she was 17 years of age. For the first time, she met the petitioner on 11.05.2021 at Lawrence Road, Amritsar and he asked her to marry him. On this, she refused to marry the petitioner because she was minor at that time and said that her family members would not agree for their marriage. On saying by the petitioner that he would marry only with her, she reposed faith in him. Thereafter, the petitioner took her to Blue Star Hotel, Amritsar and repeatedly committed rape upon her without her consent and also clicked her obnoxious photographs. The petitioner blackmailed her and threatened her that if she did not develop physical relations with him, she would face insult in her relatives due to her obnoxious photographs. On 05.01.2022, the petitioner took her to Dashmesh Nagar, Amritsar, where he committed rape upon her against her wishes. In this manner, the petitioner committed rape upon her 6-7 times against her consent. Due to fear and insult, she did not tell about the incident to anyone. She was compelled to complain the matter, as the petitioner threatened her to have physical relations and if she did not do so, he would viral her obnoxious photographs. At the time of giving the complaint, she was 20 years of age and was capable

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of thinking about the good and bad of her life. She further stated that when the petitioner took her to the hotel for the first time, he was having drugs (chitta) with him. He took drugs (chitta) and also asked her to take the same. She can produce the photographs of the petitioner, which she was having. On coming to know that the complainant had been engaged to someone else, the petitioner along with one Gopi came to their house on 30.09.2023 in a car bearing registration No.PB-46Z-7736. When she made a request to delete her photographs, the petitioner and his companion slapped her and they abused her. They threatened to her mother, her sister and other relatives to perform marriage of the complainant with the petitioner, otherwise he would viral her obnoxious photographs on social media and also threatened to kill her and her family members. The petitioner threatened the complainant not to take legal action against him, otherwise she and her family members would be implicated in false cases, as his uncle is an officer in Punjab Police and his sister in an Advocate and he had high political approach. Due to the aforesaid, the complainant and her family members were apprehending threats to their life. With these allegations, FIR (*supra*) was registered and prayed to take strict legal action against the accused persons.

3. Learned counsel for the petitioner, *inter alia*, contends that perusal of the FIR (*supra*) clearly indicates that relationship between the petitioner and the prosecutrix was consensual in nature. Admittedly, perusal

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of medico-legal report of the prosecutrix conducted on 11.01.2024 reveals that the doctor has specifically mentioned age of the prosecutrix as 19 years and 06 months and nothing tangible has come out in the medical examination, which corroborates the case set up by the prosecution. There is no material to prove the offence under the provisions of POCSO Act. The earlier incidents took place in the year 2020 and the prosecutrix kept mum for all these years, which further dents the prosecution version. It is further contended that it will be a moot point to be determined by learned trial Court whether the prosecutrix was minor at the time of alleged incident or the petitioner can be held liable for the offence as alleged.

4. *Per contra*, learned State counsel, assisted by learned counsel for the complainant, opposes the prayer for grant of regular bail to the petitioner on the ground that in fact, the petitioner was in possession of Whatsapp chats and photographs of the prosecutrix and on the basis of same, he had been threatening her to develop physical relations with him. It is duly proved on record that the petitioner has sexually exploited the prosecutrix, who was minor at the time of incident. Learned State counsel produces the custody certificate dated 02.08.2024 of the petitioner in the Court today, which is taken on record. However, he 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

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the record of the case with their able assistance, it transpires that the petitioner is behind bars since 12.01.2024 and the trial of the case is likely to take long time in its conclusion, as learned Public Prosecutor has filed an application under Section 319 Cr.P.C. seeking summoning of the persons exonerated by the police, as additional accused and out of total 18 prosecution witnesses, only 02 have partly 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

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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 Amarbir Singh @ Rubal @ Rubal Chandigarhia 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

05.08.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No