



214

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37848-2024 (O&M)
Date of decision: 09.08.2024

Shyam @ Shyam Sunder

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. K.L. Saini, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, 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.100 dated 02.03.2023 under Section 363 of the Indian Penal Code, 1860 (for short 'IPC') [Section 366A of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') were added later on], registered at Police Station Adarsh Nagar, Faridabad.

2. The present FIR was registered on the basis of a complaint

2024:PHHC:102764



moved by mother of the prosecutrix, on the allegations that she had five children i.e. two sons and three daughters. Her daughter-prosecutrix 'RU' (name withheld) is the youngest, aged about 17 years and 02 months. On 17.07.2023, at about 07.00 a.m., after 20 minutes of crossing of one Meera wife of Sunil in front of their house, her daughter-prosecutrix left the home by asking to freshen up herself. When they made search for her, small children told that she had gone towards railway line. Earlier also, the petitioner enticed away her daughter-prosecutrix and he had again enticed away the prosecutrix.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is in custody since 11.03.2023 and for the last more than 01 year and 05 months, in spite of numerous opportunities, the prosecutrix or the complainant are not coming forward to depose before learned trial Court. Initially, the prosecutrix made a statement before the Chief Welfare Committee as well as before the police under Section 161 Cr.P.C. to the effect that she went with the petitioner voluntarily and they cohabited together as husband and wife. Therefore, provisions of POCSO Act cannot be invoked for consensual love affair between the youngsters and it would be a moot point for learned trial Court to determine whether as per the school record produced by the investigating agency, she can be held minor, to invoke the provisions of POCSO Act.

4. *Per contra*, learned State counsel opposes the prayer for grant of

2024:PHHC:102764



regular bail to the petitioner on the ground that there are serious and specific allegations against the petitioner. The minor daughter of the complainant was enticed away by the petitioner. Learned State counsel produces the custody certificate dated 08.08.2024 of the petitioner in the Court today, which is taken on record and submits that the petitioner is involved in one more 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 behind bars since 11.03.2023 and the trial of the case will take long time in its conclusion, as out of total 20 prosecution witnesses, none 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. Keeping in view the law laid down by the Hon'ble Supreme Court of India in ***Prabhakar Tewari Vs. State of U.P. and another, 2020 (1) R.C.R. (Criminal 831)*** and ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another, 2012 (2) SCC 382***, involvement of the petitioner in other case(s) would not be a ground to refuse grant of concession of regular bail.

7. 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

2024:PHHC:102764



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.”

8. 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 Shyam @ Shyam Sunder 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.

9. 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

09.08.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No