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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37610-2024 (O&M)
Date of decision: 09.08.2024

Chirag @ Sagar

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Neeru Bansal, 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.307 dated 11.08.2023 under Sections 363, 366-A, 376, 506, 34 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 4/17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), registered at Police Station Baroda, District Sonapat.
2. The present FIR was registered on the basis of an application given by father of the victim, on the allegations that he had two daughters

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and one son and his younger daughter-victim was residing at home after passing her matriculation and on 08.08.2023, in the night, at about 12.00 a.m., she, without informing to anyone, left the home. He had suspicion that on the pretext of marriage, co-accused of the petitioner namely Hariom took her away. His daughter took Rs.42,000/- and jewellery articles with her. Thus, he prayed for tracing his daughter and for taking legal action against the accused.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is not the main accused and specific allegations with regard to sexual assault on the prosecutrix have been levelled against co-accused Hariom. Learned counsel for the petitioner relies upon statement of the prosecutrix recorded under Section 164 Cr.P.C. by the jurisdictional Magistrate on 11.08.2023 (Annexure P-2), perusal of which clearly indicates that co-accused Hariom committed rape upon the prosecutrix. He further contends that the prosecutrix was having consensual relationship with co-accused Hariom and she herself called him on the date of incident. The petitioner is behind bars for the last about 09 months; he is not involved in any other case; investigating agency has already concluded the investigation and presented the final report under Section 173 Cr.P.C.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground of gravity of offence. He produces the custody certificate dated 08.08.2024 of the petitioner in the

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Court today, which is taken on record and submits that the petitioner is involved in four more cases.

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 for the last 09 months and 03 days as on 08.08.2024 and the trial of the case has not even reached halfway mark as only 01 out of 17 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. 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 cases 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 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

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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 Chirag @ Sagar 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