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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37770-2024 (O&M)
Date of decision: 09.08.2024

Karan

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

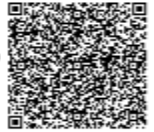
Present: Ms. Babita, Advocate and
Ms. Geeta Rani, Advocate
for the petitioner.

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.43 dated 30.01.2024 under Section 365 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 363 & 366 of IPC (added later on), registered at Police Station Samalkha, District Panipat.
2. The present FIR was registered on the basis of statement of father of the prosecutrix, on the allegations that he had four children. At

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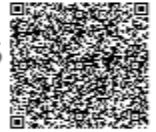


about 09.00 a.m., her daughter 'S', who was 17 years of age, without informing, left the home and not returned back. He searched her a lot, but could not find her.

3. Learned counsel for the petitioner, *inter alia*, contends that daughter of the complainant was in consensual relationship with the petitioner and their relationship was opposed to the complainant. At the time of incident, the petitioner was 19 years of age and the victim-daughter of the complainant was more than 17 years of age and her age has not been proved in accordance with law. It would be a moot point to be decided by learned trial Court whether the victim-prosecutrix was minor at the time of incident or not. Further, when the victim-prosecutrix was produced before the jurisdictional Magistrate for recording her statement under Section 164 Cr.P.C., she levelled no allegations against the petitioner and even she refused to get her medically examined. In her statement, she further stated that she left her house on her own after getting angry with her parents. Daughter of the complainant-victim moved an application to the effect that she wants to reside with the petitioner and does not want to go with her family members. The petitioner is behind bars since 30.04.2024 and he is not involved in any other case.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that there are serious allegations against the petitioner. The petitioner enticed away minor daughter of the

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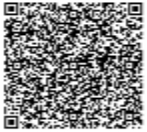
complainant. Learned State counsel produces the custody certificate dated 08.08.2024 of the petitioner in the Court today, which has been taken on record. However, he could not controvert the fact that the petitioner is not involved in any other case.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind bars since 30.04.2024 and the trial of the case will take long time in its conclusion, as out of total 16 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. 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

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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 Karan 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

09.08.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No