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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37982-2024 (O&M)
Date of decision: 09.08.2024

Vishal Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Pooja Jaglan, 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.425 dated 17.06.2023 under Sections 354, 376 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 4 & 8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') (Section 376(2)(n) of IPC and Sections 6 & 8 of POCSO Act added later on), registered at Police Station Chandnibagh, District Panipat.
2. The present FIR was registered on the basis of an application

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given by mother of the victim-prosecutrix to the police, on the allegations that she was having two children. Her daughter-victim was 14 years old. In 101 number factory situated in their neighbourhood, a boy namely Vishal i.e. the petitioner, was working and he used to tease her daughter for the last one year. On 17.06.2023 at 09.02 a.m., the petitioner enticed her daughter and took her to his house in Village Ujha and he had forcible physical relations with her. When the petitioner and the prosecutrix were coming back, brother of the prosecutrix saw them and on confronted by him, the petitioner started quarrelling with him and the passersby gave beatings to the petitioner. The petitioner, by saving himself, ran away from the spot.

3. Learned counsel for the petitioner, *inter alia*, contends that at the time of incident, the petitioner was merely 19 years of age and the victim-daughter of the complainant was also a teenager and they were in consensual relationship. The prosecution failed to produce the primary entry to prove the age of the prosecutrix-victim, in accordance with law. The petitioner is behind bars since 18.06.2023 and he is not involved in any other case and the material witnesses have already been examined.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that there are serious and specific allegations against the petitioner and the prosecutrix-victim was recovered from his possession. The FSL report clearly proves the complicity of the petitioner. However, DNA report is still awaited. Learned State counsel

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produces the custody certificate dated 08.08.2024 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 the record of the case with their able assistance, it transpires that the petitioner is behind bars since 18.06.2023 and the trial of the case has not even reached halfway mark as only 03 out of 23 prosecution witnesses have 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 Vishal Kumar 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
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No