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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-38451-2024 (O&M)
Date of decision: 13.08.2024

Sehzad @ Sehzad Mohd. @ Sehzi

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aazam Khan, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking regular bail in case bearing FIR No.135 dated 11.09.2021 under Sections 376D, 342, 506 of the Indian Penal Code, 1860 (for short 'IPC'), Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Section 25 of Arms Act, 1959, registered at Police Station Bichhor, District Nuh.

2. The present FIR was registered on the statement of father of the prosecutrix-victim, on the allegations that on 10.09.2021, at about 01.30

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p.m., his daughter-prosecutrix went for some work to the house of co-accused Asif, where the petitioner and co-accused Asif were present and they finding her alone, on gunpoint, committed rape upon her one by one and threatened her not to disclose about the incident. When his daughter did not return home, the complainant went to house of co-accused Asif to search her and he found her locked in a room. After that, he informed the police and thereafter, his daughter returned back to home.

3. Learned counsel for the petitioner, *inter alia*, contends that the prosecutrix-victim was major and she was already married and she conceded this fact in her testimony and the petitioner has been falsely implicated in the present case. Even in the statement recorded under Section 164 Cr.P.C., she has not made any allegations against the petitioner with regard to sexual assault. It is further contended that the material witnesses have been examined and the prosecutrix-victim and her father have not supported the case of the prosecution, therefore, they were declared hostile by learned Public Prosecutor. The petitioner is behind bars for the last more than 07 months and 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 serious allegations have been levelled against the petitioner and in the FSL report, semen was detected on the clothes of the prosecutrix-victim. Learned State counsel produces the custody certificate dated 12.08.2024 of the petitioner in the Court today, which is taken on record. However, she could not controvert the fact that the

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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 for the last 07 months and 23 days as on 12.08.2024 and the trial of the case has not even reached halfway mark, as only 02 out of 19 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 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.”

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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 Sehzaad @ Sehzaad Mohd. @ Sehzi 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

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No