



211

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-42204-2024 (O&M)
Date of decision: 23.09.2024

Dharmendra Sahni

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. D.S. Nigha, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

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.') (*now Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023*) seeking regular bail in case bearing FIR No.36 dated 22.02.2024 under Sections 363 & 366-A of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Focal Point, District Police Commissionerate Ludhiana.

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



by father of the prosecutrix, on the allegations that he was doing the labour work and his daughter 'A' (name withheld), whose date of birth is 28.10.2008, was studying in Class 8th in a govt. school. On 20.02.2024, in the morning, he and his wife went for doing the labour work and at about 05.00 p.m., when his wife returned back to home, she did not find their daughter-prosecutrix and her mobile number was also found switched off. Thereafter, he also came to home and searched his daughter. He came to know that on the pretext of marriage, the petitioner enticed away his daughter.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner was 19 years of age at the time of incident and there is no allegation against him with regard to subjecting the prosecutrix to any sexual assault. The petitioner is alleged to have enticed away daughter of the complainant on the pretext of performing marriage with her. It is further contended that date of birth of the prosecutrix has not been proved on record strictly in accordance with law and only Aadhar Card has been relied upon, therefore, in the absence of primary entry, it would be a moot point to be decided by learned trial Court whether the prosecutrix was minor at the time of incident or not. The petitioner is behind bars since 26.02.2024; he is not involved in any other case; the 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

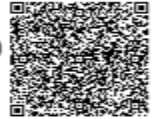


regular bail to the petitioner on the ground that the petitioner is the main accused and daughter of the complainant was minor at the time of incident, as such, he is not entitled to any relief. Learned State counsel produces the custody certificate dated 20.09.2024 in the Court today, which is taken 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 26.02.2024 and the trial of the case will take long time in its conclusion, as out of total 13 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 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 Dharmendra Sahni 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

23.09.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No