

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-2902-2024
Date of decision: 03.09.2024

....Appellant

Versus

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sanchit Punia, Advocate
for the appellant.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present appeal has been filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the impugned order dated 02.08.2024 passed by the learned Additional Sessions Judge, Hisar in case bearing FIR No.108 dated 26.02.2024 under Sections 363/366-A of IPC and Section 3(2)(v) of SC/ST Act, 1989, registered at Police Station City Barwala, District Hisar.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 25.02.2024 at about 09:30 P.M., his daughter, namely, Nisha who is 17 and a half years of age (at the time of incident) was enticed away by the accused/appellant. He tried to search her everywhere but could not trace her and thus, the instant FIR got registered.

Learned counsel for the appellant *inter alia* contends that the appellant has been falsely implicated in the present case. The prosecutrix was produced before the jurisdictional Magistrate for recording her statement under Section 164 Cr.P.C. and she has clearly stated that she left her house with her

own will after getting annoyed with her family members as they wanted her to perform marriage without her consent with a boy named Vinod and she has categorically stated that the appellant has not done anything wrong with her. He further submits that the prosecutrix has refused to undergo medical examination and even at the time of incident, the prosecution claimed that her age is 17 years and 11 months and the primary entry has not been procured by the Investigating Agency to prove the age of the prosecutrix and it would be a moot point to be decided by the learned trial Court whether the prosecutrix was minor at the time of incident or not and there is nothing on record which would make the petitioner liable for any offence breaching the threshold of SC/ST Act. The Investigating Agency has already concluded the investigation and presented the final report.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that at the time of incident, the prosecutrix was minor and as such, her statement recorded under Section 164 Cr.P.C. cannot be taken into consideration and the appellant is also involved in two more cases.

A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. CBI**' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

“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.”

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the appellant is behind the bars for 05 months and 02 days as on 02.09.2024. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as out of 17 prosecution witnesses, none has been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/appellant. Keeping the appellant 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.

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, the involvement of the appellant in other cases would not be a ground to refuse grant of concession of regular bail.

In view the above, the present appeal is allowed and the impugned order is set aside. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the appellant-Harditta alias Harjeet is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

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

03.09.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No