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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41987-2024 (O&M)

Date of decision: 03.09.2024

Ritik

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Ms. Pooja Jaglan, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)**CRM-34186-2024**

Allowed as prayed for.

CRM-M-41987-2024

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.52 dated 25.01.2022 under Sections 363/366-A of IPC and Sections 376/216 of IPC (Section 6 of POCSO Act added later on) registered at Police Station Quilla Panipat, Panipat.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 15.01.2022, his daughter/victim left the house without informing anyone and thereafter, he expressed suspicion that the victim had been enticed away by the accused/petitioner and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner and the prosecutrix were in a consensual relationship and thereafter, they performed marriage. The prosecutrix was produced before the



jurisdictional Magistrate and her statement was recorded under Section 164 Cr.P.C. in which she has not levelled any allegation against the petitioner rather she stated that she went with her own free will and performed marriage with the petitioner. The date of birth of the prosecutrix is alleged to be 17.11.2005. However, the primary entry has not been brought on record to prove her age strictly in accordance with law. Moreover, the complainant has been examined by the learned trial Court and he has not supported the case of the prosecution. He has made a very inconsistent statement and stated that her signatures were obtained by the Investigating Officer on blank papers and he has even refused to acknowledge the age of the prosecutrix. He further submits that the petitioner is behind the bars since 05.07.2023.

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 petitioner was 17 years and 10 months at the time of incident, as such, being a minor, her consent is immaterial and the petitioner is the main accused who has enticed away the daughter of the prosecutrix. However, she could not controvert the fact that the petitioner is not involved in any other case.

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 petitioner is behind the bars 01 year 01 month and 27 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 only 07 out of 24 prosecution witnesses have 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/petitioner. 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.

In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Ritik 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