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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-41626-2024 (O&M)
Date of decision: 02.09.2024

Suraj

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shiv Kumar, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No.453 dated 14.10.2023 under Sections 376(2)(n), 328, 506 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Kheripul, Faridabad, Haryana.
2. The present FIR was registered on the basis of statement made by the complainant-prosecutrix, on the allegations that from her marriage with Kundan Singh, she has two children. She came in contact with the

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petitioner through Ola Pay Phone App and they started talking on phone with each other. One day, the petitioner threatened to tell about their relationship to her family, if she did not show her chest to him by video calling. Thereafter, on showing her chest, the petitioner recorded a video and by threatening her to viral the said video, he called her in a hotel, where after drinking the cold drink offered by the petitioner, she fell unconscious. When the complainant gained consciousness, she found herself without clothes on her body. The petitioner was sitting by her side and he threatened her not to disclose about the incident to anyone and kept her in the hotel from 18.09.2023 to 20.09.2023 and made physical relations with her forcibly. He also blackmailed her by calling through Whatsapp calls from his mobile numbers i.e. 91292-23211 & 88821-22878.

3. Learned counsel for the petitioner, *inter alia*, contends that there is a delay of 25 days in registration of FIR (*supra*). The prosecutrix was medically examined after 25 days, which is of no consequence. There is no independent corroboration to the case set up by the prosecutrix. The complainant is a matured lady of 35 years of age and she has already been examined by learned trial Court and during her examination, she admitted that name of the person mentioned in her Aadhar Card as her husband is her friend, whereas she was married to one Kundan Singh. The petitioner was only 21 years of age at the time of alleged incident. It is further contended that the petitioner is behind bars since 20.11.2023 and he 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 the petitioner has sexually exploited the prosecutrix by making her to drink some intoxicant substance dissolved in the cold drink, due to which she became unconscious and he prepared a nude video of her. Learned State counsel produces the custody certificate dated 30.08.2024 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 for the last 09 months and 11 days as on 30.08.2024 and the trial of the case has not even reached halfway mark, as only 01 out of 19 prosecution witnesses 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

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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 Suraj 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

02.09.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No