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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43426-2024 (O&M)
Date of decision: 19.11.2024

Shamsher

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rakesh Lathwal, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking regular bail in case bearing FIR No.318 dated 03.10.2023 under Section 365 of the Indian Penal Code, 1860 (for short 'IPC') (Sections 366-A & 376 of IPC and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012 were added later on), registered at Police Station HSIDC Barhi, District Sonipat.
2. The present FIR was registered on the basis of an application moved by mother of the prosecutrix, on the allegations that she has six



children. Date of birth of the prosecutrix is 28.07.2008. On 01.10.2023 at about 10.00 o'clock, she went to work and her daughter-prosecutrix went somewhere without informing anyone at home. They made search for her, but could not find her. Either she had hidden herself somewhere or someone has hidden her for his own benefit.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case and he was not named in the FIR (*supra*). The prosecutrix was recovered on 25.12.2023 and she was produced before the jurisdictional Magistrate and her statement was recorded under Section 164 of the Code of Criminal Procedure, 1973 (*now Section 183 of BNSS*) and in her initial statement made before the Court, she had not levelled any allegation against the petitioner, as discernible from Annexure P-1. She further stated that she left her house voluntarily after her mother scolded her and she stayed with her friend Mehak. Further, she was subjected to medical examination on the same day and nothing suggestive of sexual assault has been found. Even the FSL report is negative qua complicity of the petitioner. The petitioner is behind bars since 28.12.2023 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 there are serious and specific allegations against the petitioner and he committed rape upon minor daughter

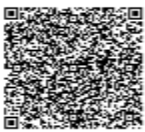


of the complainant. Learned State counsel produces the custody certificate dated 17.11.2024 of the petitioner in the Court today, which is taken on record. However, she could not controvert the fact that the petitioner is not involved in any other case.

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 28.12.2023 and the trial of the case will take long time in its conclusion as only 09 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.”

7. In view of 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 Shamsher is ordered to be released on regular bail during trial on his furnishing bail/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 learned trial Court shall proceed without being prejudiced by the observations of this Court.

[HARPREET SINGH BRAR]
JUDGE

19.11.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No