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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-47041-2023 (O&M)
Date of decision: 05.04.2024

Balwinder Singh @ Nikhil Chaudhary

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mohit Shukla, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. Prayer in the first petition filed under Section 439 Cr.P.C. is for grant of regular bail in case bearing FIR No.118 dated 02.06.2022 under Sections 354, 376(2)(n) of the Indian Penal Code, 1860 (for short 'IPC') and Sections 4, 6 & 12 of The Protection of Children from Sexual Offences Act, 2012 (for short 'the Act'), registered at Police Station City Rajpura, District Patiala.

2. The FIR (*supra*) was registered on the basis of statement of complainant 'M' with the allegations that she was studying in Class IX in a Govt. School, Rajpura and outside the school, she, Radha and one 'S' became friend. She started talking with Rohit, who was known to her for the

last one year, through Instagram. On 30.05.2022, on the saying of Radha, she along with her friends went to Kali Mata Mandir, Patiala and thereafter, they went to Omax Mall, Patiala. After calling Rohit and Nikhil Chaudhary (petitioner), Radha was left at Bus Stand, Patiala. 'S' made a phone call from the mobile number of the petitioner to her father, on this, her father got annoyed. It is further stated that petitioner Nikhil Chaudhary made a plan to ran away. On the same day i.e. 30.05.2022 in the evening, the complainant and 'S' eloped with Rohit and the petitioner, respectively and they booked separate rooms, where petitioner Nikhil Chaudhary forced himself upon 'S'. On 31.05.2022, they went to Amritsar, where Rohit and the petitioner again booked separate rooms. Rohit touched her body (kamar) in the room and kissed her. After staying in the hotel, 'S' told to her that petitioner Nikhil Chaudhary had forced himself upon her. Thereafter, she and 'S' came back to Patiala, from there, brother-in-law of the complainant took us back.

3. Learned counsel for the petitioner, *inter alia*, contends that allegations against the petitioner are with regard to rape committed upon the victim 'S'. During the course of trial, statement of mother of the victim PW2 as well as victim 'S' were recorded and both of them have turned hostile and not supported the case of the prosecution. It is further contended that age of the victim was not determined, in accordance with law, to fasten the presumption under Section 29 of the Act and in this regard, he has relied upon a Division Bench judgment of this Court in ***Terry Saroya Vs. State of Punjab and another, 2023 (4) RCR (Crl.) 176***, where it has been held that without determining the age of the victim, presumption under Section 29 of

the Act cannot be applied on the accused. Primary entry with regard to the date of birth has not been proved; rather School Leaving Certificate and Aadhar Card are on record, which do not, in any manner, prove the exact age of the victim 'S'. It is further contended that the petitioner is behind bars since 03.06.2022 and 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 medical evidence as well as DNA profile indicative of the genetic contribution of the petitioner has been matched with vaginal swabs.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 03.06.2022 and the trial of the case has not even reached halfway mark as only 04 out of 22 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 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, petitioner Balwinder Singh @ Nikhil Chaudhary 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.

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

05.04.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No