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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-45544-2024 (O&M)
Date of decision: 18.09.2024

Sameer Malik

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

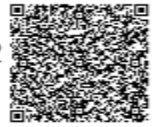
Present: Mr. Baljeet Beniwal, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking regular bail in case bearing FIR No.64 dated 23.01.2024 under Sections 323, 452, 34, 506 of the Indian Penal Code, 1860 (for short 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), registered at Police Station Mujessar, District Faridabad.
2. The present FIR was registered on the basis of an application

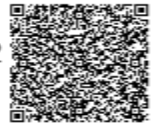
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given by mother of the prosecutrix, on the allegations that the petitioner came to their house and after alluring her daughter, he did wrong act with her. When the complainant came to their home, she saw the petitioner doing wrong act with her daughter and she caught red-handed the petitioner. In the meantime, Imran and Nonu entered their house and gave beatings to her son and by dragging him out of the house, Imran gave kick blows to his stomach. Thereafter, Nonu went to terrace and gave beatings to her husband and gave kick and punch blows to him. The accused threatened them not to tell about this incident to anyone, otherwise they would kidnap the prosecutrix and would kill her husband and her son and would also kidnap the complainant.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case on the basis of misguided suspicion. It is alleged that the petitioner was caught by the complainant, while he was having sex with her daughter and he threatened the complainant and her son. It is further contended that statement of the victim-prosecutrix was recorded by the jurisdictional Magistrate under Section 164 of the Code of Criminal Procedure, 1973 (Annexure P-3), in which she has not levelled the allegation of any penetrative sex against the petitioner and even in the Medical Legal Report (Annexure P-2), nothing has been found, which suggests that the prosecutrix was subjected to any sexual assault. The petitioner is behind bars since 25.01.2024 and age of the

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prosecutrix is yet to be proved and it would be a moot point whether the petitioner can be held liable for any offence under the provisions of POCSO Act. The petitioner is not involved in any other case and he was 18 years of age at the time of incident.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner was caught red-handed by the complainant and the prosecutrix was minor at the time of incident, as such, her consent is of no consequence. Learned State counsel produces the custody certificate dated 17.09.2024 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 25.01.2024; he is not involved in any other case; charges were framed on 05.08.2024 and trial of the case will take long time in its conclusion, as out of total 16 prosecution witnesses, none 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*

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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, present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner Sameer Malik 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 learned trial Court shall proceed without being prejudiced by observations of this Court.

18.09.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No