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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-48760-2024 (O&M)
Date of decision: 03.10.2024

Robin Kumar @ Robin Saharan

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

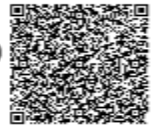
Present: Mr. K.D.S. Hooda, Advocate and
Mr. Amresh Gaur, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

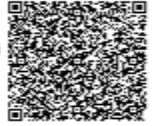
1. The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking regular bail in case bearing FIR No.233 dated 28.08.2023 under Sections 363, 366 of the Indian Penal Code, 1860 (for short 'IPC') [Sections 376(2) (n), 417, 506 of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') added later on], registered at Police Station Sadar Tohana, District Fatehabad.
2. The present FIR was registered on the basis of a complaint made

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by grandfather of the prosecutrix, on the allegations that his granddaughter 'S' (name withheld) was studying in Class 12th in a Govt. school and her date of birth is 09.06.2006. On 28.08.2023, in the morning, she went to school, but did not return back. The complainant came to know that the petitioner enticed away his granddaughter.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner and the prosecutrix fell in love with each other, however, their relationship was opposed to her family. Due to opposition, both of them eloped on 28.08.2023 and thereafter, FIR (*supra*) was registered. The petitioner and the prosecutrix travelled to various places. However, on 19.10.2023, the prosecutrix was recovered and after counselling, her statement was recorded under Section 164 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') (*now Section 183 of BNSS*), which is available on record as Annexure P-2 and perusal of the same would indicate that she has levelled no allegation against the petitioner and she even refused to get herself medically examined and she requested the jurisdictional Magistrate to send her to Nari Niketan and on 20.10.2023, her custody was handed over to her parents and thereafter, on 03.11.2023, under the pressure of her parents, she made another statement under Section 164 of Cr.P.C. (*now Section 183 of BNSS*), in which she levelled allegations against the petitioner with regard to her sexual exploitation. It is further contended that the petitioner is behind bars since 10.11.2023 and he is not involved in any

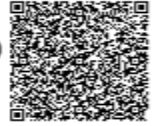


other case. Initial version of the prosecutrix clearly proves innocence of the petitioner and later version is apparently due to tutoring and influence of her family.

4. Mr. B.S. Beniwal, Advocate appears on behalf of the complainant and files his *Vakalatnama* in the Court today, which is taken on record. He vehemently opposes the prayer made by the petitioner for grant of regular bail on the ground that the petitioner had abducted the prosecutrix from her school and there is a video recording of the incident and he kept her confined in his custody for 52 days and raped her against her consent. When custody of the prosecutrix was handed over to her parents, she made a voluntary statement implicating the petitioner in the offence under Section 376 of IPC and Section 6 of POCSO Act.

5. *Per contra*, learned State counsel produces the custody certificate dated 01.10.2024 of the petitioner in the Court today, which is taken on record and on instructions from ASI Pooja Rani, he submits that consent in the present case is immaterial, as at the time of incident, the prosecutrix was less than 18 years of age. The prosecutrix has been examined as PW1 and she has supported the case of the prosecution. However, learned State counsel could not controvert the fact that the petitioner is not involved in any other case.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the



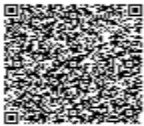
petitioner is behind bars since 10.11.2023 and the trial of the case has not even reached halfway mark, as only 01 out of 23 prosecution witnesses has been examined so far. The culpability, if any, would be determined at the time of trial. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

7. 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.”

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

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the trial, petitioner Robin Kumar @ Robin Saharan 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.

9. 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.

03.10.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No