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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47221-2024

Date of decision: 26.09.2024

Harpreet Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Ranjodh Singh Sidhu, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 483 of Bharatiya
Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR
No.153 dated 05.09.2023 under Sections 363/366-A/376-D/120-B of IPC and
Sections 6/19 of POCSO Act, 2012 registered at Police Station Sadar Patti,
District Tarn Taran.

The FIR (*supra*) was lodged on the statement of the complainant
by alleging that on 01.09.2023, he was not present at home and his youngest
daughter went to school. His elder daughter/prosecutrix and his mother were
present at home. When he returned back at about 05:00 P.M., he saw that his
elder daughter/prosecutrix was not present in the house. He tried to search her
everywhere but could not trace her. Thereafter, he came to know that his
daughter/prosecutrix had been enticed away by the accused/petitioner on the
pretext of marriage and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contend that there is a
delay of four days in the registration of the FIR (*supra*) and at the time of
incident, the petitioner was nearly 19 years of age and daughter of the



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complainant and petitioner was having a love affair with each other which was opposed to the complainant. On the one hand, the complainant is saying that his daughter is minor and after few days of registration of the FIR (*supra*), her marriage was solemnized. The date of birth of the prosecutrix is yet to be proved in accordance with law. The primary entry has not been taken into possession by the Investigating Officer. The petitioner is behind the bars since 05.10.2023 and proximity between the age of the petitioner and the prosecutrix requires a lenient view.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that the petitioner is the main accused and the prosecutrix has made specific allegations against the petitioner in her statement recorded under Section 164 Cr.P.C. by the jurisdictional Magistrate. He further submits that the FSL and DNA report is yet to be received. However, he could not controvert the fact that the petitioner is not involved in any other case.

A two Judge Bench of Hon'ble Supreme Court in '***Satender Kumar Antil v. CBI***' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

"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



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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.”

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 05.10.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as no prosecution witnesses has been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. 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.

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, the petitioner-Harpreet Singh 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.

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

26.09.2024

Neha Whether speaking/reasoned : Yes/No
 Whether reportable : Yes/No