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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-47637-2024 (O&M)  
Date of decision: 27.09.2024

Mohammad Avesh

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rohit Kumar, Advocate  
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

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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.55 dated 31.01.2024 under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Section 376 of the Indian Penal Code, 1860 (for short 'IPC') (Section 6 of POCSO Act was added later on), registered at Police Station Industrial Sector-29, Panipat, District Panipat.

2. The present FIR was registered on the basis of an application



moved by mother of the victim, on the allegations that she was having three daughters. The petitioner was residing in a room near their room. On 31.01.2024, she and her husband went out for some work and at about 12.00 p.m., the petitioner called her daughter-prosecutrix in his room and committed rape upon her.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. The criminal law was set into motion after an unexplained delay. The prosecutrix, her mother and her father have already been examined as PW1, PW2 & PW3, respectively and their testimonies are available on record as Annexures P-3 to P-5, perusal of which clearly indicates that star witnesses of the prosecution have not supported the case of the prosecution and they turned hostile. Further, there is no evidence to support that the prosecutrix was minor at the time of incident. As per ossification test of the prosecutrix, she was 16-17 years at the time of incident. The petitioner is behind bars since 01.02.2024 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 him. He further submits that FSL report indicates that human semen was detected from the clothes of the prosecutrix. Learned State counsel produces the custody certificate dated 26.09.2024 of the petitioner in the Court today, which is taken on record. However, he could



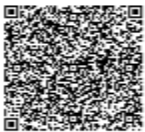
not controvert the fact that the petitioner is not involved in any other case.

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 in custody for the last 07 months and 26 days as on 26.09.2024 and the trial of the case has not even reached halfway mark as only 04 out of 16 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*

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*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 Mohammad Avesh 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 the trial Court shall proceed without being prejudiced by observations of this Court.

[ HARPREET SINGH BRAR ]  
JUDGE

27.09.2024  
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No