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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-48153-2024

Date of decision: 01.10.2024

Sunrise

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Virender Soni, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.138 dated 05.05.2024 under Sections 498-A/376/377/323/34 of IPC, Section 6 of POCSO Act and Sections 9/10/11 of Prohibition of Child Marriage Act, 2006 registered at Police Station IMT Rohtak, District Rohtak.

The FIR (*supra*) was registered on the statement of the complainant by alleging that her marriage was solemnized with the accused/petitioner against her wishes and her father has spent Rs.4.50 lakh in this marriage. It is further alleged that her husband/petitioner has developed physical relations with her against her wishes. On 28.02.2024, the accused/petitioner and his mother told her about the loan they have taken and asked her to get money from her father. Further, after marriage, the complainant came to know that the accused/petitioner is already married and divorced and has 08 years old son and this fact has been concealed from her



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and her family. Thereafter, on non-fulfilment of their demands for dowry, the petitioner started defaming the complainant in her relatives and on 09.03.2024, he left her at the resident of her *bua* in village Filoi and ran away. When the complainant called her, he told her either to get Rs.5 lakh or get registry of 2 *bighas* of land in village Misari in his name and then he will accept her. On 11.03.2024 at about 05:00 P.M., when her family members were going to meet the petitioner's family at their house, the accused/petitioner mistreated them and quarrelled with them, on account of which, the complainant received injury on her neck and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the prosecutrix is legally wedded wife and she has stayed in her matrimonial home for about one month. Thereafter, the matrimonial dispute ensued between the couple and the FIR (*supra*) was lodged after a lapse of 2^{1/2} months and the provisions of POCSO Act have been invoked to wreak vengeance on the entire family. The parents of the petitioner have been granted the concession of anticipatory bail. Further, at the time of the marriage, the age of the prosecutrix was allegedly 17 years and 06 months, at the most it could be voidable marriage at the instance of the prosecutrix and her date of birth is yet to be proved in accordance with law and it would be a moot point to be decided by the learned trial Court whether, the provisions of POCSO Act can be invoked in the facts and circumstances of the present case or not. He further submits that the investigation of the case is complete and final report has already been presented before the Court concerned by the Investigating Agency.

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



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to the petitioner on the ground that there are specific allegations against the petitioner and he is the main accused. He further submits that the prosecutrix was minor at the time of her marriage and she was raped by the petitioner against her consent. 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 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 for 04 months and 07 days as on 30.09.2024. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and

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trial of the case has not made much progress as only 01 out of 16 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-Sunrise 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

01.10.2024*Neha*

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