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

CRM-M-48332-2024

Date of decision: 01.10.2024

Ajay

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Sandeep Saini, 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.0046 dated 16.02.2023 under Sections 363/366-A of IPC (Sections 120-B/34/376(2)(n)/506 of IPC and Section 6 of POCSO Act added later on) registered at Police Station Kaithal Sadar, District Kaithal, Haryana.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 15.02.2023 at about 03:00/03:30 A.M., the accused/petitioner enticed away his daughter by alluring her on the pretext of marriage and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner is young boy of 20 years of age and he has been falsely implicated in the present case. He is in judicial custody since 04.03.2023 and in fact, the petitioner was having an affair with the prosecutrix and they were engaged in a genuine romantic relationship which was opposed to the parents of the prosecutrix and as such, the FIR (*supra*) was registered due to their opposition.



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He further submits that the material witnesses including the prosecutrix have already been examined by the learned trial Court and the deposition of the prosecutrix is available on record. The prosecutrix has not supported the case of the prosecution and she has been declared hostile by the learned Public Prosecutor. Further, the age of the prosecutrix has not been proved in accordance with law.

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 FSL report is positive with regard to the presence of spermatozoa on the undergarments of the prosecutrix and the petitioner. 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



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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 01 year 06 months and 25 days as on 29.09.2024 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 even reached half way mark as only 06 out of 24 prosecution witnesses have 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-Ajay 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