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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-48558-2024 (O&M)
Date of decision: 03.10.2024

Mohit

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

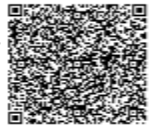
Present: Mr. Rajesh Lamba, Advocate for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

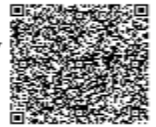
1. The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking regular bail in case bearing FIR No.43 dated 27.05.2024 under Sections 376(2)(n), 506, 406 (later on added) of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Central, Faridabad, District Faridabad.

2. The present FIR was registered on the basis of a complaint moved by the complainant-prosecutrix, on the allegations that a friend of her brother, namely Mohit (petitioner), was on visiting terms to her house and they became friendly with each other and started talking to each other on



mobile phone. One day, the petitioner asked her to meet him at a Metro Station and further asked to meet him at a Home Stay. Thereafter, in the month of September, 2022, he raped her against her consent. When she opposed to this, the petitioner threatened her to make her obscene video viral on social media and by blackmailing and threatening her, in the month of June, 2023, he again committed rape upon her and thereafter, on 06.05.2024 and 20.05.2024. The petitioner also took away her mobile phone.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. Perusal of FIR (supra) clearly indicate that it is an admitted case that there was friendly relationship between the petitioner and the prosecutrix and they used to regularly interact with each other on mobile phone. It is further contended that there was consensual relationship between the petitioner and the prosecutrix. The prosecutrix is major and she is a matured woman to know her welfare. The petitioner got recharged mobile phone of the prosecutrix on numerous occasions, which is discernible from Annexure P-5. Further, the investigating agency has already taken into possession record of OYO Hotel Delight Residency, Sector-15, Faridabad pertaining to different dates from the year 2022 to 2024 and register maintained by the aforesaid hotel clearly reveals that the petitioner and the prosecutrix had signed at the relevant time and also provided their Aadhar Card details, which clearly indicates that relationship between them was consensual and at no point of time, the

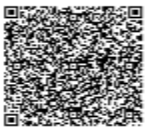


petitioner had sexually exploited the prosecutrix against her consent. The investigation of the case is complete. The petitioner is behind bars for the last more than 04 months and he is not involved in any other case.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner has sexually exploited the prosecutrix on the pretext of marriage and his intention to cheat her was bad from the very inception, which is clearly visible, as the petitioner was already married and he kept the prosecutrix in dark. Learned State counsel produces the custody certificate dated 02.10.2024 of the petitioner in the Court today, which is taken on record. However, she 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 behind bars since 28.05.2024 and the trial of the case will take long time in its conclusion, as none out of 18 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.

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 impression that it is a police State as both are conceptually opposite to each other.”

7. In view of 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 Mohit 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

03.10.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No