

CRM-M-48905-2024 (O&M)
Date of decision: 04.10.2024

...PETITIONER

V/S

...RESPONDENT

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

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (ORAL)

1. This is the first petition filed under Section 483 of Bharatiya
Nagarik Suraksha Sanhita 2023 seeking grant of regular bail to the petitioner in
case bearing FIR No. 103 dated 02.02.2024 registered under Sections 365 of
Indian Penal Code (Section 6 of Protection of Children from Sexual Offences
Act, 2012 added later on) at Police Station Palla, Faridabad District Faridabad.

2. The FIR(supra) has been lodged on the basis of statement of complainant Shrikant Yadav on the allegations that he is doing private job and having three children. His elder daughter is Muskan Yadav. Her date of birth is 10.10.2007 and his younger daughter is Kajal Yadav, whose date of birth is 01.04.2010. It was further alleged that both his daughters had left the house on the previous day evening without informing to anyone. His daughter Muskan, whose appearance is wheatish complexion long face, healthy body, height 5 feet 4 inch and aged 17 years and Kajal whose appearance is wheatish complexion, healthy body, height 5 feet and is wearing blue colour jacket with plazzo and Muskan was wearing black suit and brown colour jacket with red



colour scarf (Dupatta). They had searched near and far and at the place of their relatives but have not got any information about his daughters. They have suspicion that somebody has confined his daughters. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the criminal law was set into motion by the father of the victims by registering missing report. Subsequently, daughters of the complainant had returned and their statements under Section 164 of Cr.P.C. was recorded before the Jurisdictional Magistrate, wherein no allegation of committing any sexual assault has been levelled. Learned counsel further relies upon the statement of daughter of the complainant, wherein following was recorded:

“I used to talk with the boy namely Saddam. On dated 31.01.2024 I had gone on tour with him. On my return my family members came to know about this and they have scolded me. On dated 02.02.2024 I left my house in anger alongwith my younger sister xxXXXX. We first went to Badarpur and then stayed at Kalka Ji Temple. We also called Saddam there on 04.02.2024 and then we all together visited Red Fort, lotus temple etc. at Delhi. On dated 06.02.2024 Saddam had dropped us Agwanpur Chowk, Faridabad and then we returned to home. During this noting wrong was happened with me or my sister.”

4. It is further argued that in spite of the fact that there is no allegation with regard to the sexual assault, the Investigating Agency has added the offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 without any justifiable reason and there is no evidence to prove the same. The investigation of the case is complete and petitioner is behind the bars since 04.04.2024.

5. Per contra, learned State counsel opposes the prayer made by learned counsel for the petitioner on the ground that petitioner has enticed



away the daughters of the complainant and both of them were minor at the time of incident and petitioner has suffered the disclosure statement and has demarcated the place of occurrence.

6. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars for since 04.04.2024 and out of total 23 prosecution witnesses, none has been examined so far. Culpability, if any, would be determined at the time of the trial.

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."

7. In view of the above, the present petition is allowed and the petitioner-Saddam is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate 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.

October 04, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No