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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-49911-2024 (O&M)
Date of decision: 19.11.2024

Amit Kumar @ Dabbu @ Rajesh Kumar

... Petitioner

Vs.

State of Punjab

... Respondent

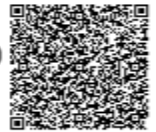
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.K. Choudhary, Advocate
for the petitioner.

Mr. Nitesh Sharma, DAG, Punjab.

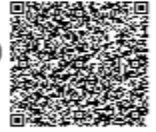
HARPREET SINGH BRAR, J. (ORAL)

1. 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 23.07.2024 under Sections 137(2) & 87 of the
Bharatiya Nyaya Sanhita, 2023 (for short 'BNS'), registered at Police Station
Purana Shalla, District Gurdaspur.
2. The present FIR was registered on the basis of statement made by
mother of the prosecutrix, on the allegations that she has two sons and one
daughter, who is around 16 years and 05 months of age and her date of birth is



25.02.2008. On 22.07.2024 at about 02.45 p.m., when her husband went to city and her sons were sleeping in the bedroom, the prosecutrix went to house of her neighbour Kishan Lal and she returned home at about 03.15 p.m. It is further alleged that the complainant went to roof of her house and when she came back, she did not find the prosecutrix in the house. Thereafter, they searched for the prosecutrix, but could not locate her. The complainant had firm belief that the petitioner had enticed away her on the false pretext of marriage.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case and he was never known by the name of Amit Kumar, as his real name is Rajesh Kumar. Learned counsel for the petitioner refers to statement of the prosecutrix/daughter of the complainant recorded by the jurisdictional Magistrate under Section 164 of the Code of Criminal Procedure, 1973 (*now Section 183 of BNSS*), in which, the prosecutrix clearly stated that she was major at the time of alleged incident and her family members were forcing her to marry with someone else and she was also made to withdraw her from school, therefore, she left her house out of fear of her family. She further stated that she was born in the year 2005 and her family members burnt all the relevant documents. The investigation of the case is complete. The petitioner is nearly 19 years of age; he is behind bars since 08.08.2024 and is not

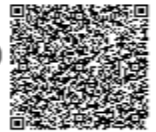


involved in any other case.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner enticed away minor daughter of the complainant on the false promise of marriage and she was recovered after 15 days of the alleged incident. Learned State counsel files the status report by way of affidavit of Dilpreet Singh, IPS, Assistant Superintendent of Police, Dinanagar, District Gurdaspur and the custody certificate dated 16.11.2024 of the petitioner in the Court today, which are taken on record. However, he could not controvert the fact that the petitioner is not involved in any other case and investigation of the case is complete.

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 08.08.2024 and the trial of the case will take long time in its conclusion, as none out of 11 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 Amit Kumar @ Dabbu @ Rajesh Kumar is ordered to be released on regular bail during trial on his furnishing bail/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 learned trial Court shall proceed without being prejudiced by the observations of this Court.

19.11.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No