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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52406-2024

Date of decision: 25.10.2024

Seema and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Chander Shekhar Singhal, Advocate
for the petitioners.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 483 of Bharatiya
Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No.37
dated 30.03.2024 under Section 313 of IPC and Sections 6/21/17 of POCSO
Act registered at Police Station Naggal Police District Ambala.

The FIR (*supra*) was lodged on the basis of information received
on 28.03.2024 by ASI Rajwinder Kaur that offence under the POCSO Act has
been committed with the victim/prosecutrix. On receiving information, she
went to CHC, Chormastpur and came to know that the child victim has been
sent to Government Hospital, Ambala and when she went there, the victim
found admitted and she verbally disclosed that the son of her elder uncle (*taya*),
namely, Dimple, made physical relations with her in 2023 forcibly, on account
of which, she got pregnant. It is further alleged that when she told this fact to
the family of Dimple, his mother and other family members got done her
abortion 5-6 days ago and thus, the instant FIR got registered.



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Learned counsel for the petitioners *inter alia* contends that the petitioners are household ladies and as per the case set up by the prosecution, Dimple is the main accused who has impregnated the victim/prosecutrix and the allegations of aborting the child are against co-accused, namely, Shakuntala and petitioners have been falsely implicated in the present case only for the reason that petitioner No.1 is the aunt and petitioner No.2 is the mother of the main accused, namely, Dimple and they are alleged to have facilitated the abortion of the prosecutrix/victim. He further submits that the similarly situated co-accused, namely, Paramjeet Kaur and Sonia, have been granted the concession of regular bail by the learned Additional Sessions Judge, Fast Track Court, Ambala, vide order dated 19.04.2024. Further, the victim/prosecutrix has been examined by the learned trial Court and she has not supported the case of the prosecution as discernible from Annexure P-2. Petitioners are behind the bars for the last more than six months and the trial of the case is likely to take long time.

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 petitioners on the ground that there are serious and specific allegations against the petitioners as the petitioners have played an active role in getting the abortion done and as such, they are not entitled to any relief.

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 petitioners are behind the bars since 12.04.2024. 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 made much progress. There are 24 prosecution witnesses. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioners. Keeping the petitioners in further detention without the prospect of the trial being concluded in the near future, would be violative of their 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 petitioners-Seema and Sinder Devi are ordered to be released on

regular bail during trial on their 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

25.10.2024
Neha

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