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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-51742-2024 (O&M)
Date of decision: 24.10.2024

Gurwinder Singh @ Ravi

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. D.S. Virk, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking regular bail in case bearing FIR No.234 dated 24.07.2023 under Sections 363, 366A, 376(2)(N) of the Indian Penal Code, 1860 (for short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), registered at Police Station Sadar Kaithal, District Kaithal.

2. The present FIR was registered on the basis of a complaint moved by brother of the victim, on the allegations that his sister 'R' aged about 17 years was missing since the night of 23.07.2023 and she could not be found



despite being searched. He had suspicion that she had gone with his brother-in-law (jija) (petitioner).

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case due to ongoing matrimonial dispute between the petitioner and his wife. The victim-prosecutrix is real sister-in-law of the petitioner and at the time of alleged incident, her age was more than 17 years and during pendency of the trial, a compromise has been effected between the petitioner and his wife, as there was no one in the family to look after the minor children and his wife. The petitioner is behind bars since 31.07.2023 and he is not involved in any other case and is having clean antecedents.

4. Mr. Jaswinder Singh Rana, Advocate appears on behalf of respondent No.2 and files his *Vakalatnama* in the Court today, which is taken on record. He submits that the prosecutrix is major now and misunderstanding happened between the husband and wife and now they have resolved their dispute amicably and the complainant and the victim have no objection in case the present petition is allowed and the petitioner is granted bail.

5. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that there are serious and specific allegations against the petitioner. Further, the prosecutrix was produced before learned jurisdictional Magistrate and her statement under Section 164 of Cr.P.C. (*now Section 183 of Bharatiya Nagarik Suraksha Sanhita, 2023*) was

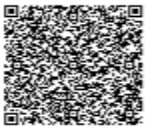


recorded, in which she reiterated her allegations against the petitioner.

6. 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 in custody for the last 01 year, 02 month and 21 days as on 23.10.2024 and the trial of the case has not even reached halfway mark as only 04 out of 18 prosecution witnesses have 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.

7. 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.”

8. 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 Gurwinder Singh @ Ravi 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.

9. 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.

[HARPREET SINGH BRAR]
JUDGE

24.10.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No