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**204 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-56876-2024 (O&M)
Date of Decision: 21.11.2024

AJAY KUMAR

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

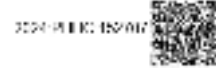
Present: Mr. Gyan Parkash Saini, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

Harpreet Singh Brar J.(Oral)

1. This is the first petition filed under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 seeking grant of regular bail to the petitioner in case bearing FIR No. 64 dated 13.03.2024 registered under Sections 363, 366-A, 376(2)(n), 376(3), 120-B of Indian Penal Code and Sections 4(2) and 6 of Protection of Children from Sexual Offences Act 2012 at Police Station Kalayat, District Kaithal.

2. Brief facts of the case are that the complainant 'M' lodged a missing complaint in Police Post, Kalayat stating that he has one son 'H' and daughter 'T', aged about 15 years. His daughter is studying in Nirmal Public School in 10th class. He reported that on 12.03.2024, his daughter 'T' was preparing for her 10th class examination and at about 01:00 AM, his wife woke up and found his daughter to be missing from her room. She could not be found despite being traced everywhere and on checking the



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CCTV footage of neighbourhood, it was seen that two boys had taken his daughter on a motorcycle. He raised suspicion that the boys appearing in the CCTV cameras have kidnapped his daughter 'T'. On this complaint, formal FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that petitioner has been falsely implicated in the present case. Because as per the case set up by the prosecution, the victim-prosecutrix came in contact with co-accused Ankit through instagram and he had sent her a message asking her to meet. Further, the allegation with regard to penetrative sexual assault is only against the co-accused Ankit and further the prosecutrix has already been examined before the trial Court and her statement is available on record as Annexure P-2 and perusal of the same would indicate that allegation against the present petitioner is only to the extent of taking the main accused and the prosecutrix on his motor cycle and thereafter on his car and she has not levelled any allegation against the petitioner with regard to any sexual assault. The petitioner is behind the bars since 20.03.2024.

4. Per contra, learned State counsel filed the custody certificate, which is taken on record and opposes the prayer made by learned counsel for the petitioner on the ground that petitioner has facilitated the enticing away of the minor daughter of the complainant and as such his complicity is duly established on record. However, he could not controvert the fact that petitioner is not involved in any other case.

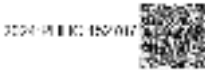
5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner is behind the

bars since 20.03.2024 i.e. for a period of 08 months and 01 day as on 20.11.2024 and out of total 16 prosecution witnesses, only 01 has been examined so far, therefore, the conclusion of trial is likely to take considerable long time. Culpability, if any, would be determined at the time of the trial. The petitioner is not involved in any other case.

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."

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



7. 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

21.11.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No