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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-53900-2024 (O&M)
Date of decision: 06.11.2024

Wajid @ Fallu

... Petitioner

Vs.

State of Haryana

... Respondent

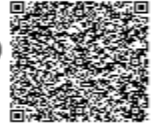
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sanyam Khetarpal, Advocate
for the petitioner.

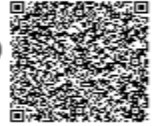
Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The 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.26 dated 24.05.2022 under Sections 313, 365, 506, 120-B of the Indian Penal Code, 1860 (for short 'IPC'), Sections 6 & 21 of The Protection of Children from Sexual Offences Act, 2012 and Section 5 of the Medical Termination of Pregnancy (MTP) Act, 1971, registered at Women Police Station Nuh, District Nuh.
2. The present FIR was registered on the basis of a complaint

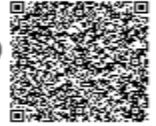


moved by the complainant-victim, on the allegations that on 20.12.2021, when she went to her plot to bring the fodder for the animals, petitioner Wajid @ Fallu and co-accused Azad were already present there and finding her alone, they did wrong act with her against her consent and also threatened to kill her, if she told about the incident to anyone. Due to fear, she remained silent and by taking advantage of her silence, they continued to do wrong things with her repeatedly. The accused also clicked her obscene photographs and threatening to make the same viral, they blackmailed her and kept forcing her into an illegal relationship. She became pregnant. In addition to accused Wajid @ Fallu and co-accused Azad, other co-accused Abid and Ajru also had relations with her. On being informed about her pregnancy to the petitioner, the accused along with Kheruna gave her various types of medicines, due to which, she started experiencing pain in her abdomen. After two days of death of her father, on the night of 30.03.2022 at about 12.00 a.m., when her family members were sleeping, co-accused Ajru and Abid forcibly took her to Al-Samar Hospital, Nuh in a car and even in the car, they committed wrong acts with her. When she reached to the hospital, Kheruna, Ameen, Jamshed and others were already present there. On asking about bringing her to the hospital, Kheruna said that they were going to terminate her pregnancy. Under threat, the accused kept her in the hospital for the entire night and when she gained consciousness in the



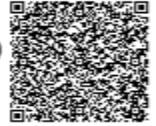
morning, she realized that her four months old baby had been aborted. While coming back to home, the accused along with Kheruna, Ameen and Jamshed disposed of aborted fetus and dirty clothes etc. in an empty well near the brick kiln between Malab and Ranika. Two days before the incident, on 28.03.2022, due to demise of her father, her entire family was in grief. She did not tell about this to anyone for several days. Even after improving her health, the accused continued to blackmail her using the photographs and committed wrong acts with her. Ultimately, she narrated about the entire episode to her mother and thereafter, the matter was reported to the jurisdictional police authorities.

3. Learned counsel for the petitioner, *inter alia*, contends that initially, total 07 persons were implicated in the FIR (*supra*). However, the Investigating Officer exonerated four persons and four new persons were added. This fact alone suffocates the case set up by the prosecution. The prosecution version indicates that the petitioner along with co-accused Azad were alleged to have raped the victim-prosecutrix. However, co-accused Azad was given clean chit by the investigating agency during the investigation. Further, co-accused of the petitioner namely Ajru, Saif and Tanjila have been granted the concession of regular bail and anticipatory bail by learned Additional Sessions Judge, Fast Track Special Court for trial of offences under POCSO Act, Nuh vide orders (Annexures P-3 to P-5)



respectively. The petitioner as well as the prosecutrix were in consensual relationship and they both intended to marry each other and their relationship was not approved by family of the victim-prosecutrix and when she became pregnant, she could not conceal the same from her family. The petitioner was also minor at the time of incident, however, he was treated as adult. The petitioner is behind bars since 04.06.2022 and he is not involved in any other case and in spite of passing of more than 02 years and 06 months, the prosecution has failed to conclude its evidence and delay in trial is not attributable to the petitioner, as he is in judicial custody. The delay in trial infringes the fundamental right of the petitioner enshrined under Article 21 of the Constitution of India.

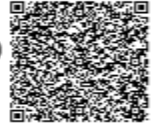
4. *Per contra*, learned State counsel, on instructions from Inspector Rajbala, opposes the prayer for grant of regular bail to the petitioner on the ground that there are serious and specific allegations against the petitioner and DNA report clearly indicates his complicity in the alleged offence. Learned State counsel produces the custody certificate dated 05.11.2024 of the petitioner in the Court today, which is taken on record. However, he could not controvert the fact that the petitioner is not involved in any other case and the prosecution has not able to conclude its evidence in spite of passing of more than 02 years and 06 months from the registration of FIR (*supra*).



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 04.06.2022 and conclusion of trial will take some time, as out of total 22 prosecution witnesses, 04 PWs are yet to be examined. 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. The foundational concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last Court.

7. It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the

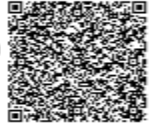


Constitution of India would come into play.

8. In this regard, reference is being made to the law laid down by the Hon'ble Supreme Court in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- ***Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh Vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578, Babu Singh and others Vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others Vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh Vs. State of U.P. (2JJ.) and Fazal Vs. State of Uttar Pradesh, (2012) 5 SCC 752.***

9. 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.”

10. 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 Wajid @ Fallu 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.

11. 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

06.11.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No