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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-56824-2024

Date of decision: 20.11.2024

Mohd. Sajid

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Sanjiv Kumar, Advocate
for the petitioner.

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.230 dated 27.08.2023 (Annexure P-1) under Section 346 of IPC (Section 6
of POCSO Act and Sections 376(2)(n)/506 of IPC added later on) registered at
Police Station Sanoli, District Panipat.

The FIR (*supra*) was registered on the statement of the
complainant by alleging that on 07.08.2023, his wife along with his daughter
aged about 15 years has left the house. He tired to search them everywhere but
could not trace them and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the
petitioner has been falsely implicated in the present case. The FIR (*supra*) was
registered on the basis of the allegation that the wife and daughter of the
complainant had left their home on 07.08.2023 without informing him and
thereafter, on 27.08.2023, the FIR (*supra*) was registered. The prosecutrix was



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subjected to medical examination and nothing suggestive of sexual assault has been detected. Further, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. in which she has named Akram and Sandeep along with the present petitioner. However, during investigation, identically placed co-accused, namely, Akram and Sandeep were declared innocent and the petitioner is behind the bars since 24.12.2023. He further submits that the complainant is in the habit of filing similar complaints and one such FIR was cancelled after the veracity of the allegations made by the complainant, were found false. Further, the forensic report is negative *qua* the complicity of the petitioner.

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 petitioner on the ground that there are specific and serious allegations against the petitioner and he has committed rape upon the daughter of the complainant. She further submits that the prosecutrix has appeared as PW-1 and duly supported the case of the prosecution and has identified the petitioner.

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

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record of the case, it transpires that the petitioner is behind the bars since 24.12.2023. 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 as only 01 (i.e. the prosecutrix who has been partly examined) out of 23 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. 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.

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 petitioner-Mohd. Sajid is ordered to be released on regular bail during trial on his 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

20.11.2024*Neha*

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