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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-56343-2024 (O&M)
Date of decision: 19.11.2024

Jarnail Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. B.K. Mehta, Advocate
for the petitioner.

Mr. Nitesh Sharma, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. 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.34 dated 10.06.2023 under Sections 363, 366-A, 376 of
the Indian Penal Code, 1860 (for short 'IPC') and Section 4 of POCSO Act,
registered at Police Station Bhindi Saidan, District Amritsar.
2. The present FIR was registered on the basis of statement made by
grandfather of the victim-prosecutrix, on the allegations that date of birth of
the victim-prosecutrix is 04.02.2008 and she was studying in Class 10th in a



Govt. School. On 08.06.2023 at about 10.00 p.m., the victim-prosecutrix went to sleep in the house, but when he woke up on 09.06.2023 at around 05.00 a.m., he did not find her in the house. Thereafter, the complainant along with other family members searched for the victim-prosecutrix, but could not find her. They came to know that the petitioner, in connivance with his mother Balwinder Kaur and his brother Major Singh, enticed away the victim-prosecutrix on the pretext of marriage.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. Co-accused of the petitioner, namely Balwinder Kaur and Major Singh, have been granted the concession of anticipatory bail by this Court vide order dated 19.01.2024 passed in CRM-M-45601-2024 and CRM-M-50096-2024. Further, the material witnesses have already been examined. The complainant and the prosecutrix have appeared as PW1 and PW2 respectively and none of them have supported the case of the prosecution, therefore, they were declared hostile by learned Public Prosecutor, as discernible from their depositions, available on record as Annexures P-2 & P-3. The petitioner is behind bars since 11.06.2023 and he is not involved in any other case.

4. *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. The prosecutrix has levelled specific

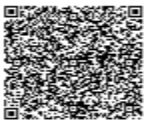


allegations against the petitioner in her initial statement recorded under Section 164 of the Code of Criminal Procedure, 1973 (*now Section 183 of BNSS*) by the concerned jurisdictional Magistrate.

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 11.06.2023 and the trial of the case has not even reached halfway mark, as only 04 out of 12 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.

6. 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.”

7. 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 Jarnail Singh is ordered to be released on regular bail during trial on his furnishing bail/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

8. 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.

19.11.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No