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208 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-57894-2024 (O&M)

Date of Decision: 26.11.2024

SAHIL VERMA @ SAM

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amitabh Tewari, Advocate (through video conferencing)
and Mr. Ishaan Mundeja, Advocate for the petitioner.

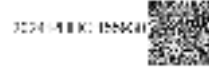
Ms. Geeta Sharma, DAG Haryana.

Mr. Sachin Mittal, Advocate for the complainant.

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. 24 dated 16.03.2024 registered under Section 6 of Protection of Children from Sexual Offences Act, 2012 and Sections 376(3) and 376(2)(n) of Indian Penal Code at Women Police Station, Gurgaon, District Gurugram, Haryana.

2. In brief, the facts of the prosecution case are that on 16.03.2023, 'N'/mother of girl child (name withheld to conceal the identity of girl child and hereinafter referred to as complainant/mother of girl child) moved a written complaint to the police inter-alia alleging therein that she along with her family had been residing at Gurugram (location withheld) and is a housewife. She has been blessed with a daughter 'S', aged 14 years (name withheld to conceal the identity of girl child and hereinafter referred to as child victim) who had been studying in 10th Class and it was in her knowledge that her daughter was having friendship since 2-3 months with a



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boy named Sam @ Sahil (petitioner herein) who was also studying in the School of her daughter. She alleged that in the evening of 14.03.2024, her daughter revealed to her that on 07.03.2024, at about 06:00/07:00 p.m. accused had committed rape upon her at the terrace of their Society and further disclosed that earlier to that also on 11th February, 13th February & 14th February accused had committed rape upon her. Accordingly, legal action was sought. On the basis of complaint, FIR in the present case was registered.

3. Learned counsel for the petitioner *inter alia* contends that the alleged incident of committing sexual assault and rape upon the prosecutrix pertains to 11.02.2024, 13.02.2024 and 14.02.2024, however, FIR(supra) was registered only on 16.03.2024 and the delay in registration of FIR(supra) itself creates serious doubt on the integrity of the case set up by the prosecution. Further the primary entry of the date of birth of the prosecutrix was never procured by the Investigating Agency during the investigation and only the academic record from the School was obtained. Further, learned counsel for the petitioner relies upon the messages sent by the prosecutrix (Annexure P-8) and submits that it was the prosecutrix herself, who was asking for physical relations and further the petitioner is 18 years of age. Learned counsel further submits that proximity in the age between the petitioner and prosecutrix requires a lenient view. Moreover, the material witnesses have already been examined and petitioner is behind the bars since 18.03.2024.

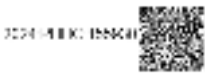
4. The learned State counsel has filed custody certificate in the Court today which is taken on record and assisted by learned counsel for

the complainant, *per contra*, vehemently opposes the grant of regular bail to the petitioner on the ground that prosecutrix is only 14 years of age and petitioner has sexually assaulted the prosecutrix thrice and as such keeping in view the seriousness of the accusation, the petitioner is not entitled to any relief by this Court. However, learned State counsel 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 19.03.2024 i.e. for a period of 08 months and 05 days as on 23.11.2024 and out of total 17 prosecution witnesses, only 06 have been examined so far, therefore, the trial has not reached even the halfway mark. 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-Sahil Verma @ Sam 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

26.11.2024
Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>