

CRM-M-58326-2024
Date of decision: 27.11.2024

...PETITIONER

STATE OF HARYANA

...RESPONDENT

Present: Mr. Suresh Nain, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This is the first petition filed under Section 483 Bharatiya Nagarik Suraksha Sanhita (BNSS) seeking grant of regular bail to the petitioner in the case bearing FIR No.57 dated 15.03.2024 registered under Sections 363, 366-A, 376, 506 of Indian Penal Code and Section 4 of POCSO Act, 2012 at Police Station Industrial Area, Bhiwani, Haryana.

2. Brief facts of the prosecution case are that on 15.03.2024, complainant Madhu by coming in the police station moved a complaint, wherein she disclosed that her daughter victim 'K', 16 years old had gone to stay in the house of her *bua* (aunt) in Bhiwani. In the afternoon, she went to bazaar to fetch some household articles but did not return. On inquiry, the complainant came to know that prior to going bazaar, the victim had talks on mobile number, which belongs to Sumit (petitioner herein), upon whom, the complainant was having a suspicion as the petitioner had an evil eye upon the victim and he has enticed her daughter. Hence, FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the



petitioner has been falsely implicated in the present case. Learned counsel submits that the petitioner and prosecutrix were in a consensual relationship and her date of birth has not been proved in accordance with law. Learned counsel further submits that whether the provisions of POCSO Act can be invoked or not, would be a moot point, to be determined by learned trial Court. Further, the petitioner is behind the bars since 18.03.2024 and the material witnesses have already been examined. Furthermore, both the complainant and victim/prosecutrix have not supported the case of the prosecution and they have been declared hostile by learned Public Prosecutor. The petitioner is a young boy of 20 years of age and he is not involved in any other case.

4. *Per contra*, learned State counsel produces custody certificate, which is taken on record and opposes the prayer made by the petitioner on the ground that the petitioner has committed the rape upon the minor daughter of the complainant and FSL and DNA reports are still awaited, however, she could not controvert the fact that the 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 18.03.2024 and has undergone a period of 08 months and 09 days as on 26.11.2024 and he is not involved in any other case. The Investigating Agency has concluded the investigation and filed the final report under Section 173 Cr.P.C. before the concerned Court. Trial of the case is likely to take long time as out of total 26 prosecution witnesses, only 13 have been examined so far. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of his rights under Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

6. 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.”

7. Accordingly, the present petition is allowed. The petitioner-Sumit alias Manjeet is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

8. Nothing observed hereinabove shall be construed to be an expression of opinion by this Court lest it may prejudice the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

November 27, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |