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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-58665-2024

Date of decision: 28.11.2024

Gaurav alias Gourav Kumar

....Petitioner

Versus

State of Haryana

...Respondent

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

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.1065 dated 24.11.2023 under Sections 363/366 of IPC registered at Police Station Samalkha, District Panipat.

The FIR (*supra*) was registered on the statement of the complainant by alleging that on 22.11.2023, his victim/daughter who was 18 years 08 months of age (at the time of incident) went to the fields for work and not returned back home. The complainant tried to search her everywhere but could not trace her 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 and the perusal of the case set up by the prosecution clearly indicates that the alleged victim is major and when her statement was recorded before the jurisdictional Magistrate under Section 164 Cr.P.C., the prosecutrix has clearly stated that she went from her home on her own sweet will and she wants to stay with the petitioner only.



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Further, the prosecutrix has refused to get herself medically examined. He further submits that the proximity in the age between the petitioner and the prosecutrix requires lenient view. The petitioner is behind the bars since 23.05.2024 and the investigation is complete.

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that there are serious and specific allegations against the petitioner and he has enticed away the daughter of the complainant on the pretext of marriage.

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 23.05.2024. 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 out of 15 prosecution witnesses, none has 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-Gaurav @ Gourav Kumar 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

28.11.2024*Neha*

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