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260 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63526-2023 (O&M)
Date of decision: 29.07.2024

GURPREET SINGH @ GOLDI

...PETITIONER

V/S

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. D.S. Bhinder, Advocate for the petitioner.

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR J. (ORAL)

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No.12 dated 25.01.2023 registered under Section 04 of Protection of Children from Sexual Offences Act and Section 376/506 of Indian Penal Code at Police Station City Tapa Mandi, District Barnala.

2. As per the case of prosecution, instant FIR was registered on the statement of victim (name withheld to conceal the identity of victim) on the allegations that on 22.01.2023 at about 8.30 pm, her mother sent her alongwith their neighbour Goldi (petitioner herein) to reside with her sister, who was working in Trident Factory, Sanghera and was alone at her room. Petitioner was also working in Trident Factory, Sanghera and he took her in the evening and left her to house at 6.15 AM on next morning. Then on 23.01.2023 in the evening, petitioner again took her and on the way and told her to drive motorcycle, but she refused to do the same. Petitioner took the motorcycle in vacant fields near Tapa and removed her clothes and committed rape upon her. She raised alarm, but no one heard her voice and thereafter he left her to her sister. On 24.01.2023, at about 6.15 am, she returned back with petitioner to her house due to fear and on the same day also, petitioner forcibly committed



rape on her at some deserted place and threatened her. On that day, she disclosed the incident to her mother, who made complaint at helpline No.181. On the basis of aforesaid statement, present FIR was registered against the petitioner.

3. Learned counsel for the petitioner *inter alia* contends that during the pendency of present petition, the parties have amicably settled their dispute. A petition under Section 482 of Cr.P.C. has been filed seeking quashing of FIR(supra) on the basis of compromise and this Court vide order dated 04.09.2023, passed in CRM-M-34084-2023 (Annexure P-3), has directed the parties to appear before the jurisdictional Magistrate and get their statements recorded in terms of compromise. Learned counsel further submits that the complainant has already been examined by the trial Court and she has not supported the case of the prosecution. Petitioner is behind the bars since 06.02.2023 and not involved in any other case.

4. Per contra, the learned State counsel opposes the prayer made by learned counsel for the petitioner on the ground of gravity of offence and submits that petitioner is accused of sexually exploiting the minor daughter of the complainant and as such, even on the basis of compromise, petitioner is not entitled for grant of regular bail.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 06.02.2023. He is not involved in any other case. Out of total 16 prosecution witnesses, only 7 have been examined so far, thus, trial has not even reached the half way mark. 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 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 demo cracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

7. Therefore, without commenting upon the merits of the case, lest it may prejudice the outcome of the trial, the present petition is allowed and the petitioner-Gurpreet Singh @ Goldi 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 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.

July 29, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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