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

CRM-M-65354-2023

Date of decision: 25.07.2024

Balwant Singh

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. R.K. Arya, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. Ankur Mehta, Advocate for
Mr. Abhishek Thakur, Advocate
for the complainant/respondent No.2.**HARPREET SINGH BRAR, J. (ORAL)**

This second petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.0116 dated 26.11.2021 under Sections 363/366-A of IPC (Sections 344/376 of IPC and Section 6 of POCSO Act added later on) registered at Police Station Shri Hargobindpur, District Batala. First petition was dismissed as withdrawn on 22.09.2023.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 22.11.2021, the complainant went to Qadian and his wife also went to Khojkipur for some work and their elder daughter, namely, Sumanpreet Kaur was alone at home and when the complainant returned home at 2 o'clock in the afternoon, his daughter was not present at home. Thereafter, they searched her everywhere but could not trace her and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that he has



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been falsely implicated in the present case and he is behind the bars since 12.06.2022. The petitioner and the prosecutrix were in love with each other and their relationship was opposed to the family of the prosecutrix due to which, both of them had eloped and approached this Court by filing CRWP No.11394 of 2021 titled as 'Sumanpreet Kaur and another Vs. State of Punjab and others' (Annexure P-2). He further contends that the statement of the prosecutrix was recorded before the jurisdictional Magistrate under Section 164 Cr.P.C. in which she has clearly indicated that she voluntarily went with the petitioner and she gave birth to a girl child. It is further submitted that date of birth of the prosecutrix has not been proved in accordance with law and it would be a moot point to be determined by the learned trial Court whether the prosecutrix was minor at the time of incident or not.

The learned State counsel has filed status report dated 24.07.2024 by way of an affidavit along with custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that there are specific allegations against the petitioner and he enticed away minor daughter of the complainant, however, he could not controvert the fact that 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



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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 record of the case, it transpires that the petitioner is behind the bars for 02 years 02 months & 18 days as per custody certificate. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and the trial of the case has not even reached halfway mark as only 05 out of 23 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.

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-Balwant Singh 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

25.07.2024

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