



210

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-60978-2024

Date of decision: 10.12.2024

Sonu @ Irfan

....Petitioner

Versus

State of Haryana

...Respondent

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

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No.32 dated 24.01.2024 (Annexure P-1) under Section 365 of IPC registered at Police Station Pinjore, Panchkula, subsequently, Sections 313/363/365/366/376/506 of IPC and Section 6 of POCSO Act have been added/amended by way of framing of charges vide order dated 29.05.2024 (Annexure P-6) passed by the learned Special Court, POCSO, Panchkula.

The FIR (*supra*) was registered on the statement of the complainant by alleging that on 21.01.2024 at around 07:30 A.M., the victim/daughter of the complainant who was 17 years of age (at the time of incident) left for school and did not return back to home. Thereafter, the complainant approached to the School and he came to know that his daughter did not go to school. The complainant tried to search her but could not trace her and thus, the instant FIR got registered.

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

**CRM-M-60978-2024****-2-**

petitioner is not named in the FIR (*supra*) and thereafter, he was nominated as an accused. According to the information given by the prosecutrix before the Doctor at the time of her examination on 28.01.2024, she has given the alleged date of incident as '19.01.2024', however, in the FIR, the alleged date of incident is '24.01.2024' which creates serious doubt on the integrity of the case set up by the prosecution. He further refers to the deposition of the victim/prosecutrix as PW-1 and submits that at the time of incident, she was 17 years of age and she has categorically stated that she has accepted the proposal of friendship from the petitioner and exchanged phone number with him and with regard to the allegation of pregnancy, there is nothing on record to suggest any forcible sexual intercourse as nothing has been detected in the medical examination of the prosecutrix. On the other hand, in the cross-examination, the prosecutrix has admitted that she has not got herself medically examined in any hospital for the earlier incident and further, she has not made any hue and cry and has not informed anyone with regard to the forcible insistence of the petitioner. The petitioner is behind the bars for the last 10 months, although, the case is listed before the Special Court, the prosecution has not been able to examine its witnesses and in 10 months, only 01 witness has been examined. The prosecutrix has only been examined. The FSL and DNA reports have not been received till date. The petitioner was 18 years of age at the time of incident and proximity between the age of the petitioner and the prosecutrix requires lenient view.

The learned State counsel has filed 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 serious and specific allegations



against the petitioner and the prosecutrix has specifically stated in her statement recorded under Section 164 Cr.P.C. that she became pregnant.

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 record of the case, it transpires that the petitioner is behind the bars since 30.01.2024. 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 only 01 out of 18 prosecution witnesses 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

**CRM-M-60978-2024****-4-**

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-Sonu @ Irfan 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

10.12.2024*Neha*

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