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

CRM-M-60884-2024

Date of decision: 10.12.2024

Shiv Kumar

....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.280 dated 10.11.2023 under Sections 363/366-A of IPC registered at Police Station Sadar, Ambala, Haryana, subsequently, offences under Section 376 of IPC and Section 6 of POCSO Act, 2012 have been added during the course of investigation.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 07.11.2022 at around 12:30 P.M., the accused/petitioner who was the labourer having all information of the house of the complainant, took away the victim/daughter of the complainant. The villagers have told her that the victim was seen with the accused/petitioner and when the complainant called the accused/petitioner and asked him about her daughter, he disconnected the phone. The accused/petitioner has enticed and kidnapped the daughter of the complainant and thus, the instant FIR got registered.

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



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petitioner was 18 years of age at the time of alleged incident and he is behind the bars since 26.11.2023 and more than one year has passed, the prosecution has failed to conclude its evidence in spite of the fact that the case is listed before the Fast Track, Special Court under POCSO Act. He further submits that the perusal of the statement of the prosecutrix recorded under Section 164 Cr.P.C. before the jurisdictional Magistrate (Annexure P-3) clearly indicates that the prosecutrix has joined the company of the petitioner with her own sweet will and she has been friends with him for the last one and a half year and she accompanied the petitioner to Amritsar, Delhi and to the village of the uncle of the petitioner and thereafter, they went to the house of the petitioner. Similar statement has been made by the prosecutrix in her deposition as PW-1 before the learned trial Court. He further submits that material witnesses have already been examined and the petitioner is not involved in any other case. Proximity between the age of the petitioner and the prosecutrix requires a lenient view and further, the medical evidence does not suggest the forcible sexual intercourse.

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 the prosecutrix and the complainant have supported the case of the prosecution and reiterated the allegations against the petitioner. He further submits that the consent of the prosecutrix is immaterial as she was minor at the time of incident and petitioner has enticed her away from the lawful guardianship of her mother. However, he could not controvert the fact that the petitioner is behind the bars for 01 year and 13 days.

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 26.11.2023. 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 even reached halfway mark as only 04 out of 25 prosecution witnesses have 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.

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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-Shiv 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

10.12.2024*Neha*

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