

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

Date of decision: 12.12.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Ms. Geeta Sharma, DAG, 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.252 dated 10.08.2024 (Annexure P-1) under Sections 137/96/87 of BNS,
2023 (Section 87 of BNS added later on and Section 96 of BNS deleted later
on) registered at Police Station Bahalgarh, District Sonipat, Haryana.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 08.08.2024 his daughter who was 16 years of age at the time of incident, left home without informing anyone. The complainant and his family tried to search her everywhere but could not trace her. It is further alleged that the daughter of the complainant has been enticed away on the pretext of marriage by the accused/petitioner and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the FIR (*supra*) was registered after an unexplained delay of two days which creates serious doubt on the integrity of the case set up by the prosecution. The alleged



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incident has taken place on 08.08.2024. However, the prosecutrix has refused to get herself medically examined and her medical examination was conducted on 28.08.2024 as discernible from her MLR (Annexure P-3). He further refers to the statement of the prosecutrix (Annexure P-2) recorded under Section 183 of BNSS (earlier 164 of Cr.P.C.) in which she has categorically stated that petitioner has not committed any wrong act with her and she left her home on her own will. He further submits that the petitioner and the prosecutrix are in love with each other and they intended to marry and the proximity between their age requires lenient view. The petitioner is 19 years of age and is not involved in any other case. Investigation is complete.

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 petitioner has enticed away the minor daughter of the complainant, as such, in view of the specific allegations against the petitioner, he is not entitled to any relief. However, she 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 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."

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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 28.08.2024. 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 12 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-Aalim 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

12.12.2024
Neha

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