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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32059-2024 (O&M)
Date of decision: 29.11.2024

Amarjit Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sachin Kalia, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking regular bail in case bearing FIR No.51 dated 08.03.2024 under Sections 376 & 511 of the Indian Penal Code, 1860 (for short 'IPC') (Section 511 of IPC was deleted later on) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), registered at Police Station Sahnewal, District Police Commissionerate Ludhiana.
2. The present FIR was registered on the basis of statement of

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mother of the prosecutrix, on the allegations that she is household lady and give tuition to children at her home and her husband is running a mobile repairing shop at Ludhiana. She is having two daughters, aged about 07 years and 2½ years. On 08.03.2024, at about 03.45 p.m., her younger daughter, aged about 2½ years, had gone to the park in front of their house to play and at about 04.00 p.m., the students came to her house to take tuition and her elder daughter also came inside the house for tuition. Her younger daughter, who was playing in the park, did not return to home and thereafter, she searched her in the park and in the vicinity, but could not find her. On the other side of park, house of one Amarjit Singh (petitioner), who was e-rickshaw puller, was situated and the children used to play on his e-rickshaw. When she went to house of Amarjit Singh (petitioner) to search for her daughter/victim, she found that one room of his house was bolted from inside and after knocking the door, when the petitioner came out from the room, she saw that her daughter/victim, who was holding biscuit in her hands, was with him. On asking by the complainant, her daughter/victim told her that the petitioner was moving his hands on her private part. Thereafter, she took her daughter to her home and narrated the entire incident to her husband on his mobile phone and after 15-20 minutes, he reached at home.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case due to a dispute over

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parking between the petitioner and the complainant. Husband of the complainant along with others gave beatings to family members of the petitioner. It is further contended that the petitioner is behind bars since 08.03.2024 and he is not involved in any other case and investigation of the case is complete and even the complainant has been examined by learned trial Court. Learned counsel for the petitioner has produced a copy of cross-examination of the complainant, who was examined as PW1 on 27.09.2024, in the Court today itself and submits that the complainant has categorically stated that no rape was committed upon her daughter and only bad touch was made by the petitioner. Further, the prosecutrix was not subjected to any medical examination and as such, the offence under Section 376 of IPC and Section 6 of POCSO Act are not made out.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner has sexually assaulted minor daughter of the complainant and as such, keeping in view the serious allegations against the petitioner, he is not entitled to any relief. Learned State counsel produces the custody certificate dated 28.11.2024 in the Court today, which is taken on record. However, he could not controvert the fact that the petitioner is behind bars for the last more than 08 months and is not involved in any other case.

5. Having heard learned counsel for the parties and after perusing



the record of the case with their able assistance, it transpires that the petitioner is behind bars for the last 08 months and 19 days as on 28.11.2024 and the trial of the case will take long time in its conclusion, as only 01 out of total 17 prosecution witnesses has 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.

6. A two Judge Bench of the Hon'ble Supreme Court in ***Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed as under: -

“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.”

7. In view of the above, present petition is allowed. Thus, without

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commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner Amarjit Singh is ordered to be released on regular bail during trial on his furnishing bail/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned trial Court shall proceed without being prejudiced by the observations of this Court.

29.11.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No