

215

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

CRA-S-280-2024

Date of decision: 19.07.2024

Sohan Singh (@Soni

....Appellant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shivam Sharma, Advocate
for the appellant.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present appeal has been filed against the order dated 06.12.2023 passed by the learned Additional Sessions Judge, Fatehabad, whereby, the regular bail application filed by the appellant under Section 439 Cr.P.C. in case bearing FIR No.450 dated 14.08.2023 under Sections 323/376(2)(n)/34/506 of IPC and Section 3(2)(v) of SC/ST Act registered at Police Station City Tohana, District Fathebad, has been dismissed.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that after divorce with her husband, she is residing in her father's house with her son and about three years back, when the complainant went to deposit an installment of a group loan, met with the accused/appellant at bus stand and they exchanged their mobile numbers and started talking to each other. Both the complainant and accused were interested to marry each other. It is further alleged that the accused started visiting the house of the complainant and he further took a rented house and had sexual intercourse with the complainant many times and when the complainant asked him to marry her,



CRA-S-280-2024

-2-

he used to postpone the matter on one pretext or the other. Thereafter, the accused committed rape upon the complainant and the complainant came to know that the accused was already married and he never intended to marry her and thus, the instant FIR got registered.

Learned counsel for the appellant *inter alia* contends that the prosecutrix is 28 years of age having two children and no specific date or time of alleged rape has been given by the prosecutrix and allegations against the appellant are unbelievable that he exploited the prosecutrix on the pretext of marriage. He further submits that there is no medical evidence to corroborate the case set up by the prosecution and the appellant has undergone more than 11 months of custody.

The learned State counsel has filed custody certificate in the Court today and the same is taken on record and per contra, opposes the grant of regular bail to the appellant on the ground that the appellant took advantage of the fact that the prosecutrix is divorcee and sexually exploited her on the pretext of marriage.

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,



CRA-S-280-2024

-3-

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 appellant is behind the bars since 16.08.2023. 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 made much progress as only 02 out of 22 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/appellant. Keeping the appellant in further detention without the prospect of the appeal 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 appeal is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the appellant-Sohan Singh @ Soni 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

19.07.2024

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