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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10177-2024

Date of decision: 08.08.2024

Gurwinder Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. H.S. Jhakal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. Ankur Pandey, Advocate for
Mr. Manuj Nagrath, Advocate
for the complainant.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.148 dated 14.12.2022 (Annexure P-1) under Section 498-A of IPC and in DDR No.45 dated 20.10.2023 (Annexure P-2) vide which the offence has been enhanced under Section 307 of IPC registered at Police Station Lakho Ke Behram, Tehsil and District Ferozepur.

The FIR (*supra*) was registered on the statement of the complainant by alleging that on 08.12.2022 at about 08:00-09:00 P.M., the sister-in-law (*jethani*) of the complainant called her to visit her home and at that time, her blood pressure was high. It is further alleged that her husband told her to hold their son but when she requested her husband that due to high blood pressure, she is not able to hold their son, her husband gave beatings to her and threw her from the bed and started strangulating her. Her husband, brother-in-law (*jeth*) and sister-in-law (*jethani*) gave beatings to her while strangulating.

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Further, her brother-in-law (*devar*) and sister-in-law (*devrani*) came there and turned her out of the house. When she reached home she called her father and narrated the entire incident and her husband called her father and restrained him to visit matrimonial home and scolded her father and levelled allegations against him. Thereafter, she called her father to take her from her matrimonial home and her husband told her to not return back until she fulfil their demand of bringing money and thus, the instant FIR was registered.

Learned counsel for the petitioner *inter alia* contends that criminal law was set into motion on the basis of statement suffered by the complainant on 08.12.2022 and there was no allegation levelled with regard to any injury on the head and Section 307 of IPC has been added after 10 months of the occurrence on the basis of report procured from a private doctor. For all intents and purposes, such report procured from private doctor cannot be a reliable piece of evidence. He further submits that the petitioner is behind the bars since 24.12.2023.

The learned State counsel assisted by learned counsel for the complainant has filed status report by way of affidavit dated 07.08.2024 along with 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 been harassing the complainant on account of demand of dowry and he has beaten her mercilessly on numerous occasions.

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 24.12.2023 as per custody certificate. 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 04 out of 10 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial and it would be a moot point to be determined by the learned trial Court whether offence under Section 307 of IPC is made out or not. 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-Gurwinder Singh 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

08.08.2024
Neha

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