

222 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1460-2024 (O&M)
Date of decision: 21.08.2024

ABDUL HAFIZ @ ABDUL

...APPELLANT

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. H.S. Jugait, Advocate
for the appellant.
Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (ORAL)

CRM-15689-2024

This is an application under Section 5 of Limitation Act seeking
condonation of delay of 98 days in filing the present appeal.

For the reasons mentioned in the application, same is allowed and
delay of 98 days in filing the instant appeal is condoned.

CRA-S-1460-2024

1. The present appeal has been filed against the judgment dated
29.09.2023 passed by learned Additional Sessions Judge, Faridabad, vide
which the appellant's bail application was dismissed.
2. The brief facts of the case are that on 31.5.2023 complainant
Indravati moved a complaint to the police alleging therein that she had been
employed in a private company and her husband was a driver by profession. At
her workplace, she got acquainted with Abdul Hafiz (appellant herein) and she
used to chat with him on mobile No.9667992572. In November 2021, her
husband left for Saudi Arab. In December, 2021 appellant came at her room
and committed rape upon her. He told that he had taken her obscene
photographs and video and if she disclosed to anyone about the incident, he



would viral the video. Thereafter, appellant kept on making physical contacts with her and stopped her from doing job in company. He used to transfer money for her expenses in her bank account. In November 2022, appellant committed rape upon her and on 31.5.2023, he uploaded her obscene photographs on his instagram account bearing I.D.habdulhafiz033. On the basis of aforesaid allegations, FIR in question was registered. Appellant was arrested on 21.6.2023 and his mobile in question was taken into possession.

3. Learned counsel for the appellant *inter alia* contends that appellant has been falsely implicated in the present case as the appellant and prosecutrix have been living together for a period of 03 years and prosecutrix is a married and mature lady and their relationship was purely consensual in nature. Further, the appellant has been regularly paying money to the prosecutrix to sustain her. Moreover, the alleged incident pertains to the month of November 2022 and the FIR was registered in May 2023, which clearly dents the case set up by the prosecution and there is nothing on record, which would remotely suggest that any offence breaching the threshold of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), has been committed. Investigating Agency has already concluded the investigation and filed the final report under Section 173 of Cr.P.C. The appellant is in custody since 21.06.2023.

4. Per contra, the learned State counsel opposes the prayer made by learned counsel for the appellant on the ground that appellant has committed a heinous crime and sexually assaulted the complainant and uploaded her obscene photographs, in order to detain her and produces the custody certificate. However, he could not controvert the fact that the appellant is not involved in any other case.



5. Having heard the learned counsel for the parties and after perusing the record, it transpires that appellant has undergone actual custody of 01 year 02 months and 01 day as on 21.08.2024. Trial of the case is likely to take long time to conclude as out of total 22 prosecution witnesses, none has been examined so far. So further incarceration of the appellant without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

6. 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 demo cracy, there can never be an impression that it is a police State as both are conceptually opposite to each other."

7. Accordingly, the present appeal is allowed and the impugned order dated 29.09.2023 passed by learned Additional Sessions Judge, Faridabad is hereby set aside. The appellant-Abdul Hafiz @ Abdul is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

8. 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.

August 21, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No