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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23642-2024 (O&M)
Date of decision: 12.07.2024

Sunil Kumar

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. V. Ramswaroop, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. Vaneet Thakur, Advocate
for respondent No.2-complainant.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in case bearing FIR No.166 dated 07.12.2023 under Section 376 of the Indian Penal Code, 1860 (later on amended to Section 376-C of IPC), registered at Police Station City Nawanshahr, SBS Nagar.
2. The present FIR was registered on the statement of complainant 'K' on the allegations that she used to visit the clinic of the petitioner for taking medicine and he started visiting her house and the family relations



evolved between them. On asking of the petitioner, the complainant started working in his clinic on a remuneration of Rs.5,000/- per month, w.e.f. February, 2022. The petitioner told the complainant that since he is having matrimonial dispute with his wife and after getting divorce from her, he will marry the complainant. On one day, when there was no patient in the clinic, the petitioner caught hold of her from her breast and committed rape upon her. Thereafter, on the pretext of marriage, he made physical relations with her several times. When the complainant asked the petitioner to perform marriage with her, he abused her in the name of her caste and threatened to kill her and her family members, if she reported the matter anywhere.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the FIR (*supra*) on account of a property dispute between mother of the complainant and the petitioner. The mother of the complainant sold her house after receiving the sale consideration, however, possession of the house was not delivered to the petitioner and the dispute arose, when the petitioner demanded possession. On the same set of allegations, earlier also, a complaint was made, veracity of which was examined by the jurisdictional police authorities and allegations made in the said complaint were found to be false. It is further contended that factual ingredients of offence under Section 376-C of IPC are clearly missing and no specific date and time has been given, when the petitioner sexually exploited the complainant.

4. Status report by way of affidavit of Surinder Chand, PPS,

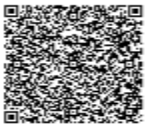


Deputy Superintendent of Police (Homicide & Forensic (PBI), SBS Nagar), having additional charge of Deputy Superintendent of Police, Sub Division Nawanshahr and the custody certificate dated 11.07.2024 of the petitioner, filed in the Court today, are taken on record. Copies thereof have been supplied to learned counsel for the petitioner.

5. *Per contra*, learned State counsel, assisted by learned counsel for respondent No.2-complainant, opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner is habitual offender and earlier also, he faced two criminal cases of the same offence and he exploited the complainant on the pretext of marriage, by falsely promising that he will divorce his wife and perform marriage with her.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the investigating agency has already concluded the investigation and submitted the final report under Section 173 Cr.P.C. before the concerned jurisdictional Court; the petitioner is behind bars since 06.04.2024 and the trial of the case would take long time, as out of 14 prosecution witnesses, none 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.

7. 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.”

8. In view the above, present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner Sunil Kumar is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

9. 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.

12.07.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No