

210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23684-2024
Date of decision: 01.08.2024

Sumit alias SummiPetitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Bishnoi, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Surjeet Singh Chahal, Advocate
for the complainant/respondent No.2.

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.55 dated 19.09.2023 under Sections 328/34/376(2)(n)/376-D/506 of IPC and Sections 66(E)/67(A) of Information Technology Act, 2000 (Sections 323/366/202 of IPC added later on during investigation) registered at Women Police Station Fatehabad, District Fatehabad.

The FIR (*supra*) was lodged on the statement of complainant by alleging that on 25.03.2022, co-accused-Sandeep took her to his dhani in the fields and committed rape upon her against her wishes. He also prepared her video on his mobile phone. Thereafter, co-accused-Sandeep used to meet the complainant and used to pressurize her for developing relations with him by extending threat of making her video viral on internet. On 16.09.2023, when the complainant had come to college for studying at about 08:30 A.M., co-accused-Sandeep met her and accused Mohit was also with him. He again

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threatened the complainant and asked her to accompany him. It is further alleged that the complainant sat on a motorcycle of Sandeep and she was taken to a park in Bhattu Kalan. He gave the complainant something to eat due to which the complainant lost her senses and fell semi-conscious. Thereafter, Sandeep called Sumit (the petitioner herein) there and both of them took the complainant to some unknown place and committed rape upon her against her wishes and left her at bus stand and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. The prosecutrix is major and mature woman of 21 years of age and it is an admitted case that the prosecutrix was having relationship with co-accused-Sandeep and in her statement recorded by the jurisdictional Magistrate under Section 164 Cr.P.C., she has not levelled any allegation against the petitioner with regard to sexual assault and only allegation levelled against him was of uttering bad words for the prosecutrix. The other person who was named in the statement recorded under Section 164 Cr.P.C. was Mohit who has been found innocent during the investigation. He further submits that the petitioner is behind the bars since 12.10.2023 and is having clean antecedents.

The learned State counsel assisted by learned counsel for the complainant has filed 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 the complainant in the FIR has specifically named the petitioner and levelled specific allegations with regard to the sexual assault and as such, he is not entitled to regular bail. However, she could not controvert the fact that the petitioner is not involved in any other case.

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 for 09 months and 20 days as on 31.07.2024 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 out of 21 prosecution witnesses, none has 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/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-Sumit @ Summi is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of

Ilalaq 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

01.08.2024
Neha

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