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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27849-2024

Date of decision: 01.07.2024

Swaranjit Bains @ Savarjit Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. R.D. Rattewal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

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.26 dated 24.02.2023 under Sections 376/452 of IPC (Section 506 of IPC added later on) registered at Police Station Nurpur Bedi, District Rupnagar.

The FIR (*supra*) was lodged on the allegation that when the husband of the complainant/prosecutrix went on his duty and her mother-in-law went to attend the marriage ceremony in the village, the accused/petitioner came at her house at around 11:30 A.M. and forcibly entered her room and grabbed her and put his hand on her mouth and developed physical relations with her and fled away. Thereafter, she called her husband but he did not pick the call and when her mother-in-law came back home, she told her everything and when her husband came back home from duty, she told him about the incident. Thereafter, she along with her husband went to police station Nurpur Bedi and got her statement recorded and, thus, the instant FIR got registered.



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Learned counsel for the petitioner *inter alia* contends that the petitioner is behind the bars since 01.03.2023 and the Investigating Agency has already concluded the investigation and filed the final report. Moreover, the factual ingredients to breach the threshold of Section 376 of IPC are missing. He further relies upon the zimini orders dated 01.12.2023 to 21.05.2023 and submits that the prosecutrix and her husband are not coming forward for deposing before the learned trial Court.

The learned State counsel has filed the 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 petitioner is the main accused and there are serious allegations against him, however, he 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 the last 01 years 03 months and 28 days 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 is progressing at the snail’s pace as only 05 out of 15 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/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-Swaranjit Bains @ Savarjit 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

01.07.2024

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