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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-33156-2024 (O&M)
Date of decision: 18.07.2024

Damanpreet Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Alka Sharma, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

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.54 dated 30.10.2023 under Sections 376-D, 366, 342, 506, 120-B of the Indian Penal Code, 1860 and Section 67 of the Information Technology Act, 2000, registered at Police Station Tallewal, District Barnala.
2. The present FIR was registered on the statement of prosecutrix-complainant 'M' (name withheld) on the allegations that she was married to Jarnail Singh and was having two children. She developed friendship with the petitioner. On 17.10.2023, the petitioner asked the complainant to meet



him at Barnala, to which she agreed to meet on 18.10.2023 at about 11.00 p.m. at Kacheri Chowk and they reached there. On asking of the petitioner to visit the house of someone, the complainant refused and thereafter, they went towards Handiaya Hotel, but instead of going to hotel, the petitioner forcibly took the complainant at Pakho Kanchian against her wishes. There, Gursharan Singh @ Sharna met the petitioner and they took the complainant to the motor room in the fields of Parminder Singh @ Jagga, who was also present there. The petitioner committed rape upon the prosecutrix-complainant and thereafter, Parminder Singh and Gursharan Singh also committed rape upon her. While Gursharan Singh was committing rape, the petitioner made a video. When the complainant asked to delete the video, the petitioner threatened her to cause harm to her husband and children. Thereafter, the petitioner and Gursharan Singh left the complainant at Canal Bridge, Tallewal and from there, she reached at her house. Due to fear, she did not tell about the incident to anyone. The petitioner uploaded the video on social media, from where the villagers including husband of the complainant came to know about the incident from social media. On the basis of this statement, FIR (*supra*) was registered.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case and the material witnesses have already been examined. The complainant-prosecutrix and her husband have not supported the prosecution version and both of them have been declared hostile by learned Public Prosecutor. Even FSL report



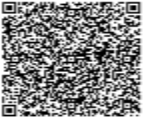
indicates innocence of the petitioner. He further contends that the petitioner is behind bars since 30.10.2023 and is not involved in any other case.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that apart from testimonies of the material witnesses, there are sufficient evidence to indicate his complicity. The petitioner is main accused and he uploaded the obscene video of the complainant-prosecutrix on social media.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind bars for the last 08 months and 15 days as on 17.07.2024 and is not involved in any other case; the complainant-prosecutrix and her husband have been declared hostile, as they have not supported the case of the prosecution and the trial of the case has not even reached halfway mark as only 05 out of 17 prosecution witnesses have 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.

6. 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.”

7. 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 Damanpreet Singh 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.

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.

[HARPREET SINGH BRAR]
JUDGE

18.07.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No