

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-36907-2024
Date of decision: 06.08.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vaibhav Prashar, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

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.0574 dated 20.09.2023 under Sections 376(2)(n)/323/427/420/506 of IPC registered at Police Station Mujessar Faridabad (Haryana).

The FIR (*supra*) was lodged on the statement of the complainant/prosecutrix by alleging that she met the petitioner in the year 2021 and they started talking with each other. Thereafter, the petitioner had repeatedly developed physical relations with the prosecutrix in the month of October, 2021 in her rented accommodation at Village Mujessar and threatened to kill her in case she would disclose this fact to anyone. It is further alleged that when the complainant/prosecutrix asked the petitioner for their marriage, he refused and again repeatedly, developed physical relations with her after pressurizing her. The complainant disclosed the whole incident to her maternal aunt who had accompanied her and on that day, the accused/petitioner damaged



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their Swift Dzire Car and mobile phone of her aunt and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contend that the perusal of the record clearly indicates that relationship between the petitioner and the prosecutrix was consensual. The prosecutrix is a mature and married woman whereas the petitioner, at the time of incident was 19 years of age. There is no corroboration to the case set up by the prosecution. Even in the medical examination, nothing tangible has come on record to indicate the complicity of the petitioner and the petitioner is having clean antecedents. He further submits that the Investigating Agency has already concluded the investigation and final report has already been presented before the Court concerned.

The learned State counsel 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 petitioner is the main accused and there are specific and serious allegations against him. He further submits that there is sufficient material on record to indicate the his complicity.

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 10 months and 14 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 has not made much progress as out of 20 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-Dhanraj Lamba 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

06.08.2024

Neha

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No