

**CRA-S-2614-2024 (O&M)****208 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRA-S-2614-2024 (O&M)****Date of decision: 28.10.2024****SUMIT NAIN****...APPELLANT****V/S****STATE OF HARYANA AND ANOTHER****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present:** Mr. Sanjeev Majra, Advocate
for the appellant.

Ms. Geeta Sharma, DAG Haryana.

**********HARPREET SINGH BRAR J. (ORAL)**

1. The present appeal has been filed against the order dated 18.07.2024 passed by learned Additional Sessions Judge, Hisar, whereby the application seeking grant of regular bail to the appellant in case bearing FIR No. 26 dated 28.01.2024 registered under Sections 328, 376, 506 of Indian Penal Code and Section 3(1)(w)(ii), 3(2)(va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Urban Estate Hissar, District Hissar has been dismissed.

2. The case of the prosecution is that on 28.1.2024, the victim got her statement recorded before the legal aid counselor revealing therein that she used to learn stenography in ITI. In July, 2013, Sumit (appellant herein) visited her house to collect the installment being L&T agent. He took her number. Thereafter, he sent her a message expressing his willingness to befriend with her. On 31.8.2023, appellant met her near ITI gate and after his repeated pursuance, she agreed to befriend with him. Thereafter, they started chatting with each other and appellant expressed his love for her. On 21.9.2023, appellant took her to a restaurant and they had lunch there. On 16.11.2023, appellant took her to Legend Hotel. She went with him in room No.107. Appellant



offered her cold drink and after consuming the cold drink, she became inebriated. Thereafter, he committed rape with her. After two hours, she regained her senses. She confronted the appellant by saying why did he commit wrong act with her, however, he convinced her saying that they would perform marriage. He also assured that he would convince his parents and it would take two months. Till 15.1.2024, everything went smoothly. On 19.1.2024, she got a call from Sumit and he stated that his parents would not agree. She did not like the same and confronted the appellant. However, accused-appellant became annoyed and threatened her. He also switched off the phone. He even blocked her number. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the appellant *inter alia* contends that appellant and victim-prosecutrix were in consensual relationship and both of them intended to marry each other however, their families were opposed to their relationship as both belonged to different castes. It is further contended that now the prosecutrix has already made a statement before the jurisdictional police that she has got the FIR(supra) registered under some misconception and prosecutrix along with her mother, who is the complainant in the present case, have sworn written affidavits which are available on record as Annexures A-1 and A-2 respectively and have clearly stated that they have no objection, in case, the petitioner is granted bail, as they both intend to marry each other. The investigation of the case is complete and the appellant is behind the bars since 16.05.2024.

4. Per contra, learned State counsel filed the custody certificate, which is taken on record and opposes the prayer made by learned counsel for the appellant on the ground that there are serious and specific allegations

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against the appellant and it would be seen by the trial Court as to whether the FIR(supra) was based on some misconception or not. However, he could not controvert the fact that appellant is not involved in any other case.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that appellant is behind the bars since 16.05.2024 i.e. for 05 months and 12 days as on 27.10.2024. Out of total 32 prosecution witnesses, none has been examined examined so far, thus, conclusion of trial shall take sufficient long time. Culpability, if any, would be determined at the time of the trial.

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 demo cracy, there can never be an impression that it is a police State as both are conceptually opposite to each other."

6. In view of the above, the present appeal is allowed and the appellant-Sumit Nain is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

7. 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.

October 28, 2024

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No