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

CRM-M-35782-2024

Date of decision: 30.09.2024

Balendra Singh Mahdele

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Naresh Kumar Khepar, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No.36 dated 20.02.2023 under Sections 304-B/34 of IPC (Section 34 of IPC deleted later on) registered at Police Station Manesar, District Gurugram, Haryana.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that the marriage of his sister, namely, Preeti, was solemnized in the month of May, 2017 with the petitioner-Balendra and at the time of marriage. In the year 2019, his sister gave birth to a female child. The complainant's side had given sufficient dowry beyond their financial capacity but the petitioner and his family members were always taunting his sister for bringing less dowry, therefore, in the month of October, 2019, they had given Rs.2 lakh to the father of the petitioner but they all kept on harassing his sister and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that on the last date of hearing, the case was adjourned on the ground that the complainant

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would be examined on the next date. In fact, the examination-in-chief of the complainant as PW-2 has already been done, however, his cross-examination has been deferred on the request of learned defence counsel and one application under Section 319 Cr.P.C. was moved for summoning of the accused persons who have been declared as innocent by the Investigating Agency. He further submits that the marriage between the petitioner and the deceased/wife took place on 21.05.2017 and out of this wedlock, one girl child was born. On 19.02.2023, when the wife of the petitioner was collecting clothes at the balcony of the house which is on the 7th floor, she suddenly slipped or unbalanced and fell down on the ground floor and died on the spot. Thereafter, on the next date of hearing, a complaint (Annexure P-4) was made by the brother of the deceased. The perusal of the case set up by the prosecution clearly indicates that there is no allegation against the petitioner, since their marriage, with regard to any harassment. However, the perusal of the prosecution version clearly indicates that there is no allegation that the deceased was subjected to any harassment immediately before her death, as such, the factual ingredients breaching the threshold of Section 304-B of IPC are not available on record and it would be a moot point to be decided by the learned trial Court whether the petitioner can be liable for the aforementioned offence or not. The petitioner is behind the bars since 30.06.2023 and he has undergone almost 01 year and 03 months in custody and only one prosecution witness has been examined and now, the prosecution has filed an application under Section 319 Cr.P.C. which would further delay the trial.

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



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to the petitioner on the ground that petitioner is the main accused and the deceased had died of unnatural death within seven years of marriage, as such, it is incumbent upon the petitioner to explain the circumstances under which she died an unnatural death.

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 since 01.07.2023. 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 only 02 out of 16 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-Balendra Singh Mahdele 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

30.09.2024
Neha

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