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

CRM-M-36181-2024

Date of decision: 02.08.2024

Guddu alias Arman

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Ms. Ekta Thakur, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

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.141 dated 03.07.2020 under Sections 376/120-B of IPC registered at Police
Station Sadar Sri Muktsar Sahib, District Sri Muktsar Sahib (Annexure P-1).

The FIR (*supra*) was lodged on the statement of the complainant
by alleging that one month back her sister-in-law had arranged her talk with
Arman (the petitioner herein) and told her that he is her brother in relation.
Thereafter, she often used to talk to him on mobile phone and he used to talk to
the complainant about marrying him. It is further alleged that on 26.06.2020,
the accused/petitioner asked the complainant to come to Bus Stand Muktsar by
bus. The complainant went to Bus Stand Muktsar by bus where the
accused/petitioner was waiting for her on his scooty and took her to some
unknown place where he developed sexual relations with the complainant
without her consent and on the next day he dropped her at Bus Stand and came
back to her village where she narrated the whole story to her mother and thus,



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the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner was having consensual relationship with the prosecutrix who is a mature woman of 24 years of age and as per her own allegation, she travelled herself for a considerable distance to meet the petitioner and there is no corroboration to the case set up by the prosecution. Even the FSL and DNA reports are negative with regard to the complicity of the petitioner and co-accused of the petitioner, namely, Raju Kaur @ Rajpreet Kaur was granted anticipatory bail. He further submits that the investigation is complete and there is no material available on record to breach the threshold of Section 376 of IPC and it would be a moot point to be determined by the learned trial Court. The petitioner is not involved in any other case.

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 cannot claim parity with the co-accused. He further submits that there are specific and serious allegations against the petitioner, as such, he is not entitled to the concession of regular bail. 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



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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 03.01.2024 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 25 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-Guddu @ Arman 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

02.08.2024

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