

2024:PHHC:099692



208

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-36411-2024 (O&M)
Date of decision: 05.08.2024

Gursharan Singh @ Sarna and another

... Petitioners

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.S. Sekhon, Advocate
for the petitioners.

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 (for short 'Cr.P.C.') 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 (for short 'IPC') 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

2024:PHHC:099692



Jarnail Singh and was having two children. She developed friendship with co-accused of the petitioners, namely Damanpreet Singh. On 17.10.2023, he 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 co-accused Damanpreet Singh to visit the house of someone, the complainant refused and thereafter, they went towards Handiaya Hotel, but instead of going to hotel, co-accused Damanpreet Singh forcibly took the complainant at Pakho Kanchian against her wishes. There, Gursharan Singh @ Sharna met co-accused Damanpreet Singh and they took the complainant to the motor room in the fields of Parminder Singh @ Jagga, who was also present there. Co-accused Damanpreet Singh committed rape upon the prosecutrix-complainant and thereafter, petitioners Parminder Singh and Gursharan Singh also committed rape upon her. While petitioner No.1 Gursharan Singh was committing rape, co-accused Damanpreet Singh made a video and when the complainant asked to delete the video, he threatened her to cause harm to her husband and children. Thereafter, co-accused Damanpreet Singh and petitioner No.1 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. Co-accused Damanpreet Singh 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.

2024:PHHC:099692



3. Learned counsel for the petitioners, *inter alia*, contends that main accused Damanpreet Singh has already been granted the concession of regular bail vide order dated 18.07.2024 passed in CRM-M-33156-2024 (Annexure P-6). Moreover, the complainant-prosecutrix and her husband have not supported the prosecution version and they have been declared hostile by learned Public Prosecutor. The scientific reports in the shape of FSL report and DNA report are also negative qua the petitioners. The petitioners are behind bars since 30.10.2023 and they are not involved in any other case.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioners on the ground that apart from testimonies of the material witnesses, there is sufficient material to indicate complicity of the petitioners. Learned State counsel produces the custody certificate dated 02.08.2024 in the Court today, which is taken on record. However, he could not controvert the fact that the petitioners are not involved in any other case.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioners are behind bars for the last about 09 months; they are not involved in any other case and the prosecutrix-complainant and her husband have been declared hostile by learned Public Prosecutor and it will take long time in conclusion of the trial as only 05 out of 17 prosecution witnesses have been examined so far and main accused Damanpreet Singh has already

2024:PHHC:099692



been granted regular bail. The culpability, if any, would be determined at the time of trial. Keeping the petitioners in further detention without the prospect of the trial being concluded in the near future, would be violative of their 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, petitioners Gursharan Singh @ Sarna and Parminder Singh @ Jagga are ordered to be released on regular bail during trial on their furnishing

2024:PHHC:099692



bail/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 learned trial Court shall proceed without being prejudiced by observations of this Court.

05.08.2024
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[HARPREET SINGH BRAR]
JUDGE

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