



CRM-M-36542-2024 (O&M)

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214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36542-2024 (O&M)

Date of decision: 28.10.2024

JITENDER

...PETITIONER

V/S

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Gulia, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

Ms. Rashi Shahrawat, Advocate
for respondent No. 2-complainant.

HARPREET SINGH BRAR J. (ORAL)

1. The petitioner is seeking grant of regular bail in case bearing FIR No. 27 dated 04.04.2024 registered under Sections 376, 506, 120-B of Indian Penal Code at Police Station Women Police Station, Jhajjar, District Jhajjar.

2. The FIR(supra) was lodged against the petitioner on the basis of statement made by complainant-prosecutrix to the effect that she was getting training in the Parlor of one Savita, which is situated near Paras Restaurant in the name of A.S. Salon. Her date of birth is 01.12.2005. On her birthday, Savita made cutting of a Cake and also served cold drink. Savita mixed some substance in the cold drink due to which she got intoxicated. Savita called Amit (Siwana), Jitu (Panipat), Kulbir (Gochi), Prince (Badli) and Ajay and all of them committed rape on her. She asked Savita as to why she had done so, then she stated that she would get her (complainant-prosecutrix) and her brothers killed. Due to that fear, she did not disclose about the incident to anybody.

Thereafter, on 28.01.2024, Savita and Jitu (petitioner herein) took her to Jupiter

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Hotel where Jitu committed rape on her. Thereafter, on 27.03.2024, she was got married in the Court with a person of unsound mind. Thereafter, they took her to different places for two days. On 15.03.2024, Occultist (Tantrik) namely Sajeet was called by Savita in her Parlor and she got something done with her. The complainant prayed that legal action might be taken against the culprits. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that petitioner has been falsely implicated in the present case and he is behind the bars since 10.04.2024. Initially, 06 persons were named as accused in the present case, however, the jurisdictional police, after thorough investigation, exonerated all other accused, except the present petitioner and co-accused Savita, who has since been enlarged on regular bail and false implication of the petitioner is writ large as there is substantial delay in registration of the FIR(supra) and from the first alleged incident, there is delay of about 04 months in lodging the FIR(supra), which creates serious doubt on the case set up by the prosecution. Further the allegation with regard to mixing the drink of the victim with intoxicant, has been disbelieved as offence under Section 328 of Indian Penal Code has been deleted by the investigating agency and the medico legal report of the victim-prosecutrix and the opinion of the doctor is also not suggestive of the complicity of the petitioner. Learned counsel for the petitioner further contends that during the pendency of the preset petition, victim-prosecutrix has realized that the petitioner has been falsely implicated. Ms. Rashi Shahrawat, Advocate has put in appearance on behalf of the complainant-respondent No. 2 and submits that she has no objection, if the petitioner is granted regular bail.



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 petitioner on the ground that there are serious and specific allegations against the petitioner and the veracity of the allegations made by the prosecutrix was thoroughly examined and complicity of the petitioner was found and he is the main accused. However, he could not controvert the fact that petitioner is not involved in any other case.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 10.04.2024 i.e. for 06 months and 17 days as on 27.10.2024. Out of total 19 prosecution witnesses, none has been examined so far, thus, conclusion of trial will take sufficient long time to conclude. 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 petition is allowed and the petitioner-Jitender 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