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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-38287-2024 (O&M)
Date of decision: 13.08.2024

Parvez @ Parvej

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Munfaid Khan, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking regular bail in case bearing FIR No.168 dated 01.10.2023 under Sections 376, 450, 506, 34 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Bichhor, District Nuh.
2. The present FIR was registered on the complaint moved by the prosecutrix-victim, on the allegations that on 29.09.2023 at about 08.30 p.m., the accused persons, finding her alone, trespassed into her house and the



petitioner committed rape upon her and co-accused Sahil and Tofik were standing outside the house. When her sister along with her husband and her brother-in-law (jeth) came, the accused persons fled away from the spot, by extending threat to kill her, if she reported the matter to anyone.

3. Learned counsel for the petitioner, *inter alia*, contends that at the time of incident, the petitioner was less than 18 years of age, whereas the prosecutrix was married and was 22 years of age. The petitioner has been falsely implicated. The alleged incident took place on 29.09.2023 and FIR (*supra*) was registered on 01.10.2023 after due deliberations. Even the medical examination conducted on the prosecutrix does not corroborate the case set up by the prosecution and on the same set of allegations, one of the co-accused namely Tafik was declared innocent by the investigating agency during the investigation. The petitioner is in custody for the last more than 07 months and he is not involved in any other case.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground of gravity of offence. The petitioner is main accused, who raped the prosecutrix. Learned State counsel produces the custody certificate dated 13.08.2024 of the petitioner in the Court today, which is taken on record. However, she could not controvert the fact that the petitioner is 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



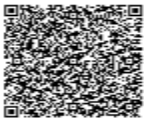
petitioner is behind bars for the last 07 months and 23 days as on 13.08.2024 and the trial of the case will take long time in its conclusion, as out of total 11 prosecution witnesses, none has been examined so far. The culpability, if any, would be determined at the time of trial. Keeping the petitioner 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.

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

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commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner Parvez @ Parvej is ordered to be released on regular bail during trial on his furnishing bail bonds/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 the trial Court shall proceed without being prejudiced by observations of this Court.

13.08.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No