

204

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-41534-2024 (O&M)
Date of decision: 02.09.2024

Sunil Saini

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

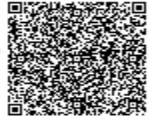
Present: Mr. Shivansh Malik, Advocate and
Mr. Bhavay Malhotra, Advocate
for the petitioner.

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 seeking regular bail in case bearing FIR No.233 dated 20.04.2024 under Sections 323, 376, 506 of the Indian Penal Code, 1860 (for short 'IPC') and Section 452 of IPC (added during the investigation), registered at Police Station Shivaji Colony, Rohtak, District Rohtak.
2. The present FIR was registered on the basis of statement made by the complainant-prosecutrix, on the allegations that she was a widow and

2024:PHHC:113426



was working as Library Attendant in MDU, Rohtak, there the petitioner was also working as Lab Technician. They developed intimacy and the petitioner kept her as his wife. However, on 19.04.2024, when she was alone at her house, the petitioner came to her in the evening and brutally beaten her and thereafter, committed rape upon her.

3. Learned counsel for the petitioner, *inter alia*, contends that the prosecutrix is a matured lady of 44 years of age and both are working in the same establishment. The petitioner is already married. However, the prosecutrix was a divorcee. Both were in consensual relationship, which is clearly visible from the photographs attached with the present petition as Annexure P-9. Learned counsel for the petitioner further relies upon numerous monetary transactions (Annexure P-10). The dispute arose between them, when the prosecutrix became possessive and pressurized the petitioner to leave his family, divorce his wife and perform marriage with her. It is further contended that the petitioner is behind bars since 20.04.2024 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 that the petitioner has sexually exploited the prosecutrix on the pretext of marriage. The prosecutrix has reiterated her allegations in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 against the petitioner and after performing marriage with her, he made physical relations with the prosecutrix. Learned

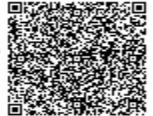


State counsel produces the custody certificate dated 30.08.2024 of the petitioner in the Court today, which is taken on record. However, she could not controvert the fact that the petitioner is not involved in any other case.

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 04 months and 10 days as on 30.08.2024 and the trial of the case will take long time in its conclusion, as out of total 18 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 commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner Sunil Saini 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.

[HARPREET SINGH BRAR]
JUDGE

02.09.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No