

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

CRM-M-43591-2024
Date of decision: 10.09.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jainainder Saini, Advocate and
Ms. Shilpa Saini, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

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.55
dated 19.09.2023 under Sections 376(2)(n)/376-D/328/506/34 of IPC and
Sections 66(E)/67(A) of Information Technology Act, 2000 (challan presented
under Section 376(2)(n)/328/366/323/202/506/34 of IPC and Sections
66(E)/67(A) of Information Technology Act, 2000) registered at Women Police
Station Fatehabad, District Fatehabad.

The FIR (*supra*) was lodged on the statement of complainant by alleging that on 25.03.2022, accused/petitioner-Sandeep took her to his dhani in the fields and committed rape upon her against her wishes. He also prepared her video on his mobile phone. Thereafter, accused/petitioner-Sandeep used to meet the complainant and used to pressurize her for developing relations with him by extending threat of making her video viral on internet. On 16.09.2023, when the complainant had come to college for studying at about 08:30 A.M.,

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accused/petitioner-Sandeep met her and co-accused Mohit was also with him. He again threatened the complainant and asked her to accompany him. It is further alleged that the complainant sat on the motorcycle of Sandeep and she was taken to a park in Bhattu Kalan. He gave the complainant something to eat due to which the complainant lost her senses and fell semi-conscious. Thereafter, Sandeep (the petitioner herein) called Sumit there and both of them took the complainant to some unknown place and committed rape upon her against her wishes and left her at bus stand and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. The prosecutrix is a major and mature lady of 21 years of age and it is an admitted case that prosecutrix was having consensual relationship with the petitioner as discernible from her statement recorded under Section 164 of Cr.P.C. (Annexure P-3) and there is delay in registration of FIR (*supra*) which has not been explained. The case set up by the prosecution is highly improbable. Once the petitioner and the prosecutrix fought with each other, there was no occasion for her to meet the petitioner and has accompanied him on his motorcycle. He further relies upon the medico legal report of the prosecutrix (Annexure P-4) and refers to the opinion of the Doctor which indicates that no sign suggestive of sexual assault at the time of her medical examination, has been found. The petitioner is behind the bars since 28.09.2023 and one of the co-accused named under Section 164 Cr.P.C. has been declared innocent and the other co-accused, namely, Sumit @ Summi has been granted the concession of regular bail by this Court vide order dated 01.08.2024 passed in CRM-M-23684-2024 titled as



‘Sumit alias Summi Vs. State of Haryana and another’.

The learned State counsel assisted by learned counsel for the complainant has filed the 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 complainant in the FIR has specifically named the petitioner and levelled specific allegations with regard to the sexual assault and as such, he is not entitled to regular bail. However, she 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 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 for 11 months and 09 days as on 07.09.2024 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 21 prosecution witnesses, 02 have been examined so far. The culpability, if

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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-Sandeep @ Sandeep Kumar 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

10.09.2024*Neha*

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