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

CRM-M-43804-2024

Date of decision: 10.09.2024

Deepak

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Shivansh Malik, 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.24 dated 29.03.2023 under Sections 323/342/354-B/365/366/376(2)(n)/376(2)(f)/506/34 of IPC (during course of investigation offences under Sections 328/354/376/511 of IPC were deleted and Sections 365/366/354-B of IPC were added and final report was presented under Sections 323/34/376(2)(n)/365/366/354-B/342/376(2)(f)/506 of IPC and the charges have been framed under Sections 323/354-B/365/366/376(2)(n)/376(2)(f)/506 of IPC) registered at Police Station Women, Jind, District Jind.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 10.03.2023 at around 09:00 A.M., she was going to Gohana at the place of his cousin, namely, Gunvir and while she was in bus, her brother-in-law, namely, Deepak asked her that he had some urgent work with her and asked her to get down from bus at S.D. School, Jind. Thereafter, she



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boarded off the bus at S.D. School, Jind at around 10:00 A.M. and Deepak (the petitioner herein) met her there and asked her to go to some hotel as he was having some urgent work and he took her to Dalamwala Hotel, Jind near Bus Stand, Jind and administered some intoxicant substance to her in some food and thereafter, committed rape upon her and threatened her to kill if she will tell about the same to anyone. It is further alleged that the accused/petitioner thereafter, called Aman son of Dharampal and his cousin to come there and sent the complainant/prosecutrix with them by saying that they would drop her to Gohana, however, Aman and his cousin took her in a Cafe in Kaithal and tried to commit rape her and kept her in the Cafe during night and next morning i.e. on 11.03.2023, called the petitioner at Titram Turn, Kaithal and then all of them took her to Gohana and dropped her at her cousin's place. When the prosecutrix was coming back to her house in Safa Kheri, the petitioner called her and threatened her that she has to go to Jakhal from the train at about 05:30 P.M. and on the way, one Mandeep met her at Narwana, who threatened her to go to Pathankot Mamun Cantt and forcefully boarded off her from Jakhal train and took her to Dharamshala and tried to commit rape with her, however, he could not succeed due to her resistance. He took her to Pathankot Mamun Cantt and kept her confined. He further left her with some unknown person on 12.03.2023. On 21.03.2023, when she came back, the accused/petitioner took her to some unknown hotel in Uchana and again committed rape upon her and also assaulted her and threatened to kill and thus, the instant FIR was registered.

Learned counsel for the petitioner *inter alia* contends that perusal of the allegations made by the prosecutrix clearly indicates that relationship



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between her and the petitioner was consensual in nature. Earlier, one FIR No.47 dated 19.03.2023 was registered on the complaint made by the husband of the prosecutrix in which he has alleged that on 10.03.2023, his wife has left the house without telling anyone and a cancellation report was filed by the police in the said matter on the ground that the prosecutrix had left her house on her own free will and on 21.03.2023, the husband of the prosecutrix named the petitioner that he suspected his wife had gone with him and on the same day, when she was recovered by the jurisdictional police authorities, she gave an affidavit to the fact that she has left her house on her own and has submitted that she does not want to live with her husband and subsequently, on the same set of allegations, the FIR (*supra*) was registered and one of the co-accused, namely, Deepak was granted anticipatory bail by this Court vide order dated 05.04.2024 passed in CRM-M-59459-2023 titled as 'Deepak Vs. State of Haryana'. The petitioner is behind the bars since 12.04.2023 and the prosecutrix has already been examined.

The learned State counsel has filed 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 there are serious and specific allegations against the petitioner and he is not entitled to the relief of regular bail.

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 since 12.04.2023. 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 only 01 out of 20 prosecution witnesses has been examined so far. The culpability, if 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-Deepak 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.

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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