

**CRA-S-3154-2024 (O&M)****209 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRA-S-3154-2024 (O&M)****Date of decision: 28.10.2024****VIKASH****...APPELLANT****V/S****STATE OF HARYANA AND ANOTHER****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Sachin Bhardwaj, Advocate and
Mr. Rohit Mittal, Advocate for the appellant.

Ms. Geeta Sharma, DAG Haryana.

**********HARPREET SINGH BRAR J. (ORAL)**

1. The present appeal has been filed seeking grant of regular bail to the appellant in case bearing FIR No. 51 dated 11.05.2024 registered under Sections 323/376/458/506/511 of Indian Penal Code and Sections 3(2)(v) of SC/ST Act at Police Station Nizampur.

2. The FIR(supra) was lodged against the appellant on the basis of statement of Sarli aged 75 years w/o Chandgiram resident of Karota, who stated that she used to do household work. She belongs to *Chamar* caste. Her husband used to do rearing of goat for his livelihood. She has two daughters. The elder daughter has died. Her husband had gone to village Begpur for taking 'Bhat' for her younger daughter. In the intervening night of 10/11.05.2024 at about 01.00 AM she was alone at her home, then Vikas (appellant herein) of their village had come to their house. Immediately after coming, he pressed her mouth and by coming over her, he throttled her and he attempted to do bad act upon her. Appellant choked her mouth and when she had raised alarm then he beaten her up. There was marriage of son of Zile Singh in their neighborhood and ladies were singing songs and on hearing her voice, those ladies came there. Vikas, on seeing coming of those ladies, had

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threatened her to kill her and fled away from the spot by climbing the wall. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Despite service, no one has appeared on behalf of respondent No.

2. Thus, this Court is left with no option to decide the case on its own merits.

4. Learned counsel for the appellant *inter alia* contends that perusal of FIR(supra) clearly indicates that there is no allegation against the appellant with regard to any offence punishable under Section 376 of IPC. Further, in the entire FIR, there is total absence of any offence punishable under Section 3(2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the complainant in the present case is 75 years of age and due to party function in the village, she has falsely implicated the appellant. The prosecutrix-complainant has already been examined before the learned trial Court and she has not supported the case of the prosecution and has been declared as hostile by learned Public Prosecutor and the appellant is behind the bars since 12.05.2024 and not involved in any other case.

5. Per contra, learned State counsel filed the custody certificate, which is taken on record and opposes the prayer made by learned counsel for the appellant on the ground that appellant has tried to commit rape upon the 75 years old and infirm lady and there is sufficient material available on record to indicate his complicity and there are serious and specific allegations levelled against the appellant. However, he could not controvert the fact that appellant is not involved in any other case.

6. Having heard the learned counsel for the parties and after perusing the record, it transpires that appellant is behind the bars since 12.05.2024 i.e. for 05 months and 12 days as on 23.10.2024. Out of total 20 prosecution witnesses, only 05 have been examined so far, thus, the trial has not reached

even the halfway mark. 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.”

7. In view of the above, the present appeal is allowed and the appellant-Vikash is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate 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.

October 28, 2024

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No