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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-45710-2024 (O&M)
Date of decision: 25.09.2024

Varinderjit Singh @ Varinder Singh @ Raja

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Arjun Veer Sharma, Advocate
for the petitioner.

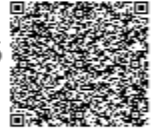
Mr. Sandeep Kumar, DAG, Punjab.

Mr. Ankit Gupta, Advocate
for the complainant.

HARPREET SINGH BRAR, J. (ORAL)

CRM-38740-2024

1. This application has been filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking addition of
offence under Section 313 of the Indian Penal Code, 1860 (for short 'IPC')
in the head note and prayer clause of the main petition.



2. In view of the averments made in the application, same is allowed and the offence under Section 313 of IPC is ordered to be added in the head note and prayer clause of the main petition. Amended head note and prayer clause are taken on record.

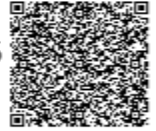
3. Registry is directed to add the same at the appropriate place.

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4. The present petition has been filed under Section Section 483 of BNSS seeking regular bail in case bearing FIR No.21 dated 03.03.2024 under Sections 376, 506, 34 of IPC and Section 313 of IPC (added later on), registered at Police Station Meharban, District Ludhiana.

5. The present FIR was registered on the statement made by the complainant-prosecutrix 'S', on the allegations that on 21.11.2023, on the eve of Gurupurab, when she went to Gurudawara Guru Nanak Sabha to worship, then wife of the petitioner asked her to hand over the keys of their house to her husband-petitioner. Thereafter, when she went to their house to hand over the keys, the petitioner took her to their house and by bolting the door, he forcibly developed physical relations with her twice and he also threatened that if she disclosed about the incident to anyone, then he would kill her. In January, 2024, she had gone to buy chillies from the shop and the petitioner, by taking her to their house, again did wrong acts with her. Under threat, she did not inform to her parents or anyone else. Thereafter, the

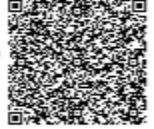
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petitioner took her to his friend's house at Golden Colony, where he and his friends also did wrong acts with her and again threatened her to kill her if she informed about the incident to anyone. On 02.03.2024, when the complainant felt pain in her stomach, she informed about everything to her mother, upon this, she along with her mother went to Police Station Meharban to report the matter, where her health had deteriorated and with the help of police, she was got admitted in Civil Hospital and was treated there.

6. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. The prosecutrix is major and she is 19 years of age. She and her father were examined by learned trial Court as PW2 & PW3 respectively and they have not supported the case of the prosecution, as such, learned Public Prosecutor declared them hostile. Further, it would be a moot point to be decided by learned trial Court whether the relationship between the petitioner and the prosecutrix was consensual in nature or she has been sexually exploited without her consent. The petitioner is behind bars since 05.03.2024 and he is not involved in any other case.

7. *Per contra*, learned State counsel, assisted by learned counsel for the complainant, opposes the prayer for grant of regular bail to the petitioner on the ground that complicity of the petitioner is proved, as when

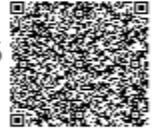


the prosecutrix became pregnant, he gave some medicine to her, which resulted into miscarriage and fetus has been preserved by the Investigating Officer. Learned State counsel produces the custody certificate dated 24.09.2024 of the petitioner in the Court today, which is taken on record. However, he could not controvert the fact that the petitioner is not involved in any other case.

8. 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 in custody for the last 06 months and 17 days as on 24.09.2024 and trial of the case will take some time in its conclusion, as 09 out of 16 prosecution witnesses have 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.

9. 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.”

10. 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 Varinderjit Singh @ Varinder Singh @ Raja is ordered to be released on regular bail during trial on his furnishing bail/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

11. 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

25.09.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No