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

CRM-M-47286-2024

Date of decision: 26.09.2024

Gurcharan Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Kuldip Singh, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No.17 dated 22.02.2022 under Sections 344/363/366-A/376(2)(n)/376-D/506 of IPC, Sections 10/11/9 of Prohibition of Child Marriage Act, 2006 and Section 6 of POCSO Act, 2012 registered at Police Station Sadar Jalalabad, District Fazilka.

The present FIR was registered on the basis of a written statement recorded by prosecutrix 'P' (name withheld), aged about 16 years, on the allegations that in the month of September, 2021, she had gone to stay in the house of her maternal aunt (*massi*) 'R' (name withheld) at Village Sukhera, District Fazilka. Accused-Fuman Singh along with his wife/co-accused had been residing in the neighbourhood of her aunt and they had been in visiting terms with each other. She stated that wife of Fuman Singh had asked her to become her daughter-in-law and she had responded by saying that she was not of marriageable age. She further stated that after a gap of 15-20 days, wife of Fuman Singh took her in white coloured car on the pretext of taking her to



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market for shopping. Accused/petitioner-Gurcharan Singh and Fuman Singh were also sitting in the same car. They had stopped the car in an abandoned place on the way, wherein accused/petitioner-Gurcharan Singh forcibly took her out of the car towards an empty plot and forcibly committed rape upon her. Fuman Singh and his wife remained present in the car. When they came back, all three threatened her to kill her family, if she disclosed about the incident to anybody. They also told her that from then onwards, she will reside with them as their daughter-in-law. She further alleged that Fuman Singh and co-accused Krishna Bai @ Krishna Rani left the accused/petitioner-Gurcharan Singh at the house of his aunt Baimbu. Her maternal aunt and her son, however, came there while making search for her and on asking as to why, she had not reached back to their house, out of fear, she stated that now onwards, she would stay with accused/petitioner-Gurcharan Singh and the same fact was told to her parents. She further alleged that accused/petitioner-Gurcharan Singh kept on ravishing her for a period of 10-15 days in the house of his aunt. In the month of October, 2021, he performed marriage with her in the presence of Fuman Singh and his wife and then they had come back to their native village and the victim started residing with them. She alleged that Fuman Singh and the co-accused used to fight with her on trivial issues and also started harassing her. In November, 2021, wife of Fuman Singh had left her at Bus Stand, Sirsa and from there, she was taken by her uncle to her parental house. She also disclosed that as she was under mental trauma and was getting treatment, therefore, she could not report the matter to the police in time.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and there is an



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unexplained and inordinate delay of 07 days in the registration of the FIR (*supra*). The allegations against the petitioner are too far fetched and highly improbably. The material witnesses i.e. the victim/prosecutrix, her mother and her father have been examined by the learned trial Court and they have not supported the case of the prosecution and the learned Public Prosecutor declared them hostile. He further submits that the DNA report is also negative *qua* the complicity of the petitioner and the petitioner is behind the bars since 02.04.2022 and is not involved in any other case.

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 allegations against the petitioner. The petitioner is in custody for the last more than 02 years and 05 months.

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 with their able assistance, it transpires that the petitioner is behind bars for the last 02 years and 05 months and similarly situated co-accused, namely, Krishna Bai @ Krishna Rani and Fuman Singh have been granted the concession of regular bail by this Court vide orders dated 08.02.2024 (Annexure P-5) passed in CRM-M-56935-2023 titled as 'Krishna Bai @ Krishna Rani Vs. State of Punjab' and 04.07.2024 (Annexure P-6) passed in CRM-M-29140-2024 (O&M) titled as 'Fuman Singh Vs. State of Punjab.' Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and the trial of the case is progressing at snail's pace as only 07 out of 21 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.

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-Gurcharan Singh 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

26.09.2024
Neha

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