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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-48641-2024 (O&M)
Date of decision: 03.10.2024

Santokh Singh @ Bhola Nihang

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Narender Singh, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking regular bail in case bearing FIR No.101 dated 11.06.2019 under Sections 376, 323, 342, 120-B of the Indian Penal Code, 1860 (for short 'IPC') and Section 201 of IPC, registered at Police Station City Samana, District Patiala.
2. The present FIR was registered on the statement made by complainant-prosecutrix 'J' on the allegations that about 08 days ago, she went to her parental village and when she was returning back from there to

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her in-laws' village, she received a phone call from mobile No.87259-33000 to the effect that her brother has to be engaged and said caller asked to meet him. On this, the complainant said that she would meet him at Village Sher Majare and at about 01.00 noon, one unknown person wearing Nihang dress, who was sent by the petitioner, with whom the complainant was talking for the last 10 days for engagement of her brother, met her. On the pretext of showing a girl at Samana, said known person straightway took her to the house of Bhola Nihang, where except Bhola Nihang, who was in drunken condition, no one was present. Thereafter, the said unknown person started molesting her and when she opposed, Bhola Nihang gave a dang blow to her and his companion put her on the bed and committed rape upon her against her consent. When she tried to raise alarm (rolla), the accused persons threatened her and Bhola Nihang gave dang blows on left side of her head, left side of her forehead, both arms, right ankle, right hand and right knee. This incident took place at about 3-4 p.m. The rapist decamped from the spot in his car and Bhola Nihang kept her restrained in his house and by getting the chance, she saved herself and ran away from his house and she also took his touch mobile phone with her. Thereafter, she made a phone call to his neighbour and told the entire story to him and on 10.06.2019, in the darkness, she was admitted in Govt. Hospital, Samana, where she got treatment. She can identify the person, who committed rape upon her. She prayed for taking legal action against the petitioner and unknown person.



3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case, only for the reason that he is related to main accused, who has committed suicide, after registration of FIR (*supra*). Further, the prosecution has already examined the complainant-prosecutrix and she has not supported the case of the prosecution and learned Public Prosecutor declared her hostile. Her deposition as PW1 is available on record as Annexure P-2. It is further contended that the petitioner is suffering incarceration without any substantive allegation and he is behind bars since 12.01.2024.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner is habitual offender. He produces the custody certificate dated 02.10.2024 of the petitioner in the Court today, which is taken on record and submits that the petitioner has been convicted in one FIR under the Arms Act and he stands acquitted in one more case under Section 302 of IPC.

5. 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 since 12.01.2024 and the trial of the case has not even reached halfway mark as only 03 out of 13 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.

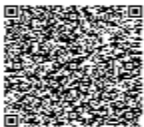
6. In view of the ratio of law laid down by Hon'ble Supreme Court in ***Prabhakar Tiwari Vs. State of UP and Anr. 2020(1) RCR (Criminal) 831*** and ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others 2012(2) SCC 382***, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

7. 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.”

8. In view of the above, present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of

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the trial, petitioner Santokh Singh @ Bhola Nihang is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

9. 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.

03.10.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No