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

CRM-M-50501-2024

Date of decision: 21.10.2024

Sunita

....Petitioner

Versus

State of Haryana

...Respondent

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

Mr. Vikas Bhardwaj, AAG, 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.114 dated 22.05.2024 under Sections 376/506/511/342/34 of IPC and
Sections 18/4 of POCSO Act, registered at Police Station Madlauda, Panipat.

The FIR (*supra*) was registered on the statement of the
complainant by alleging that on 12.05.2024, her daughter was playing in front
of her house and at that time, Sunita (the petitioner herein) called her to her
house where Prince was already present. Thereafter, the accused/petitioner
closed the door of her house from outside and thereafter, Prince forcefully
committed rape upon the daughter of the complainant and also extended threats
to her that if she told anyone about this, he would kill her and when the
complainant came to know about this incident, she found that apart from
Prince, Nikhil also tried to rape her daughter and thus, the instant FIR got
registered.



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Learned counsel for the petitioner *inter alia* contends that the petitioner is a household lady and mother of a son and a daughter, aged about 04 years and 03 years, respectively. He further submits that the main accused in the present case against whom the allegation of rape has been levelled is Prince and only allegation against the petitioner is with regard to abetment under Section 18 of POCSO Act as the petitioner has bolted the door from outside when the main accused, Prince, committed rape upon the prosecutrix.

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 the petitioner has played an active role and the alleged incident had taken place at the house of the petitioner, as such, she is not entitled to any relief. However, he could not controvert the fact that the petitioner is a lady and she is not involved in any other case.

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

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record of the case, it transpires that the petitioner is behind the bars since 23.05.2024. 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 out of 18 prosecution witnesses, none 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 her 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-Sunita is ordered to be released on regular bail during trial on her 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

21.10.2024*Neha*

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