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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-51101-2024 (O&M)
Date of decision: 22.10.2024

Usman @ Banwari

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anmol Partap Singh Mann, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking regular bail in case bearing FIR No.131 dated 06.04.2024 under Section 376 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Ferozepur Jhirka, District Nuh.
2. The present FIR was registered on the basis of a complaint moved by the complainant-prosecutrix, on the allegations that about 09 years ago, she solemnized marriage with Juber son of Usman in the Court and out



of this wedlock, no child was born. On 02.04.2024 at about 09.30 a.m., she was taking rest in her room and her husband and other family members were not present at home. Suddenly, her father-in-law (petitioner) entered in her room and closed the door from inside and after committing rape upon her against her wishes, he fled from the spot.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. There is an unexplained delay of 04 days in reporting the matter to the jurisdictional police authorities. The petitioner is a senior citizen and is 67 years of age and having frail health. He is having clean antecedents and due to property dispute, his daughter-in-law levelled false allegations against him. Learned counsel for the petitioner further contends that the prosecutrix has been examined by learned trial Court as PW1 and she has not supported the case of the prosecution, therefore, she has been declared hostile by learned Public Prosecutor and her testimony is available on record as Annexure P-3. The petitioner is behind bars since 07.04.2024 and investigation of the case is complete.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that blood and human semen were detected on the clothes of the prosecutrix and there are serious and specific allegations against the petitioner, as such, he is not entitled to any relief.

5. Having heard learned counsel for the parties and after perusing

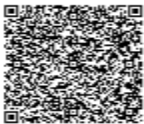


the record of the case with their able assistance, it transpires that the petitioner is behind bars since 07.04.2024; he is a senior citizen of 67 years of age; the prosecutrix has already been declared hostile by learned Public Prosecutor, as she has not supported the case set up by the prosecution and the trial of the case will take long time in its conclusion, as only 01 out of 12 prosecution witnesses has 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. 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.”

7. 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 the trial, petitioner Usman @ Banwari 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.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned trial Court shall proceed without being prejudiced by observations of this Court.

22.10.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No