

213

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-51904-2024 (O&M)
Date of decision: 24.10.2024

Ashish

... Petitioner

Vs.

State of Haryana

... Respondent

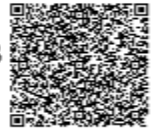
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Bhavnik Mehta, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

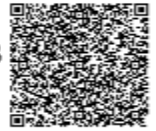
HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 483 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') read with Section 528 of
BNSS seeking regular bail in case bearing FIR No.281 dated 11.10.2023 under
Sections 354(c), 376(3), 450, 506 of the Indian Penal Code, 1860 (for short
'IPC') and Sections 12 & 4 of the Protection of Children from Sexual Offences
Act, 2012, registered at Police Station Bass, Police District Hansi, District
Hisar.
2. The present FIR was registered, on the basis of complaint made by
mother of the victim-prosecutrix, on the allegations that on 09.10.2023, she



along with her younger son had gone to her parental home for some work and her husband, who is a truck driver, was also away from home and her both daughters aged about 13 years and 10 years were alone at home. On 10.10.2023, when she returned to her matrimonial home, her elder daughter was scared and on asking by the complainant, she stated that at about 03.00 a.m., the petitioner entered in the house from backside and after pressing her mouth, he committed rape upon her and also made video of the same. The petitioner threatened the prosecutrix that he would send the said video in the group of Gram Panchayat, if she disclosed about the incident to anyone. Due to this, the prosecutrix is in stigma and she was taken to the hospital at Hansi.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. The material witnesses including the complainant and the victim have already been examined by learned trial Court and they have not supported the case of the prosecution, therefore, learned Public Prosecutor declared them hostile. Further, false implication of the petitioner is writ large on the facts of the case, as admittedly, description of clothes worn by the victim-prosecutrix at the time of her medical examination is entirely different from the clothes, which were sent for FSL examination. The human semen was detected on the lower garment and there is no material available on record that the petitioner subjected the victim-prosecutrix to sexual penetration. The petitioner is behind bars since 13.10.2023 and conclusion of the trial is likely to take long time, as out of total 24 prosecution witnesses, only 03 have been examined so far.



4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that there is sufficient evidence to prove complicity of the petitioner. The statement of the prosecutrix was recorded under Section 164 of the Code of Criminal Procedure, 1973 (*now Section 183 of BNSS*), in which she reiterated the allegations against the petitioner. The victim-prosecutrix was less than 18 years of age. As such, the petitioner 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 13.10.2023 and the trial of the case would take long time in its conclusion, as only 03 out of 24 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. 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 Ashish 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 the observations of this Court.

24.10.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No