



CRM-M-52567-2024 (O&M) 1

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

243

CRM-M-52567-2024 (O&M)

Date of decision: 28.10.2024

JAMSHED

..PETITIONER

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rakesh Dhiman, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Mithun Kumar, Advocate for
Mr. Abhishek Jindal, Advocate
for the complainant.

HARPREET SINGH BRAR, J (ORAL)

1. This first petition has been filed under Section 483 of BNSS seeking regular bail in case bearing FIR No.362 dated 06.07.2023 under Sections 302, 376, 342, 506 IPC, registered at Police Station Sadar, Nuh, District Nuh.

2. The FIR (supra) was lodged on the statement of the complainant by alleging that on 06.07.2023 around 2.30/3.00 AM his mother and sister left their house to go to plot for taking care of cattles. When they reached their, one cattle was found missing. They searched the cattle everywhere but could not trace the same. Thereafter, when the sister of the complainant namely Jafrina was going back to her house, Baithak of accused persons namely Jamshed (the petitioner herein) and Mujahid falls on the way to her house. When Jafrina reached near the



CRM-M-52567-2024 (O&M) 2

said Baithak, both the accused persons had forcibly taken her in Baithak and committed rape upon her. When the complainant heard the noise he woke up and reached there and found Jafrina weeping. On seeing the complainant, accused persons run away. Thereafter, her parents also reached at the spot and took Jafrina home. It is further alleged that when they were sitting outside of their house, out of shame and pressure, Jafrina consumed poisonous substance and she was declared dead in Nalhar Hospital on the same day and thus the instant FIR was got registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has falsely been implicated in the present case. Initial case set up against the petitioner was lodged for the offence under Sections 306 and 376-B of IPC. It is further contended that admittedly the age of the prosecutrix is more than 19 years at the time of incident and the report of the Forensic Science Laboratory, Bhondsi dated 25.07.2023 clearly indicates that no rape was committed upon the victim/prosecutrix. In other words, there was a consensual relationship between the petitioner and the prosecutrix in proof of which, there are several letters and photographs available on record which indicate their consensual relationship rather it is a case of honour killing. The petitioner has moved the complaint (Annexure P-2) against the father and brother of the deceased. During investigation, the brother and father of the deceased were found to be involved in her death. The case set up by the prosecution is further not believable as it has been alleged that the petitioner was found in a compromise position and as such, she consumed poison, however, the viscera report clearly falsified the



CRM-M-52567-2024 (O&M) 3

aforementioned allegations and further the cause of death given by the Medical Board proves that the deceased was killed by her brother and father. The cause of death given is ‘*Asphyxia due to throttling*’. The petitioner has been made a scapegoat. The petitioner is behind bars since 29.02.2024.

4. The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the prayer made by counsel for the petitioner on the ground that the vaginal swabs taken at the time of medical examination of the deceased, were sent for examination and the Forensic Science Laboratory has reported that – blood and semen were present on swabs, as such, the complicity of the petitioner is duly proved on record and he is not entitled to any relief.

5. Learned counsel for the complainant opposes the prayer made by the petitioner on the ground that it is a matter of trial whether the petitioner can be held liable for offence under Sections 306 read with Section 376-D of IPC and he is the main accused and due to relationship of prosecutrix she has consumed poison. Learned counsel, however, could not controvert the fact that the petitioner is not involved in any other case.

6. 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



CRM-M-52567-2024 (O&M) 4

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. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 29.02.2024. 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 22 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 his rights under Article 21 of the Constitution of India.

8. 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-Jamshed 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.



CRM-M-52567-2024 (O&M) 5

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.

28.10.2024

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(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No