



207

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-53612-2024 (O&M)
Date of decision: 11.11.2024

Surender @ Bittu

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sanchit Punia, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

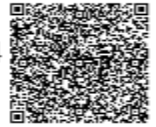
Ms. Jasleen Kaur, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

CRM-44079-2024

1. This application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [now Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')] seeking amendment in the main petition.

2. In view of the averments made in the application, same is

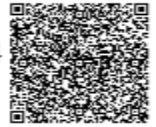


allowed. Amended petition dated 05.11.2024 is taken on record. Registry is directed to tag the same at the appropriate place of the case file.

CRM-M-53612-2024

3. Present petition has been filed under Section 439 of Cr.P.C./Section 483 of BNSS seeking regular bail in case bearing FIR No.64 dated 18.07.2024 under Sections 70(1), 123, 351(3), 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS'), registered at Women Police Station Hansi, Police District Hansi, District Hisar.

4. The present FIR was registered on the basis of an application moved by the complainant-victim, on the allegations that few days ago, she went to Yuduvanshi School, Garhi to inquire about the work, where she met one female sanitary worker, who gave contact number of co-accused Parkash and when she contacted him for sanitary work, he told her that there were holidays in the school and he assured to get job for her and also for her husband after the holidays or her son would be admitted in the school. He further assured the complainant that she would get a room to stay in the school itself. After the holidays got over, Parkash called her to the office of the school at Hansi and told that she would have to work there for one or two days and thereafter, she would get the job in the school. On 18.07.2024 at about 09.00 a.m., Parkash called her and thereafter, he along with one Anil took her in an auto from near Jind Chowk to a shop at Bhagat Singh Road, Hansi, where Surender, owner of a cycle shop was also present. All of them made her to

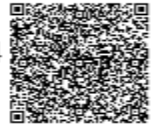


drink beer (alcohol) and committed rape upon her one by one. Thereafter, they made her to sit in an auto and threatened her not to disclose about the incident to anyone, otherwise they would kill her and her entire family.

5. Learned counsel for the petitioner, *inter alia*, contends that the prosecutrix is married and a matured lady of 26 years of age. Perusal of FIR (*supra*) indicates that the alleged incident took place in broad daylight at 09.00 a.m. in the shop of the petitioner, located in the busy market place. All the allegations levelled by the complainant are too far-fetched and unbelievable. The prosecutrix had not raised any hue and cry and according to her own version, she left the place of occurrence in an auto rickshaw without informing anyone with regard to the alleged incident. It is further contended that the petitioner has been falsely implicated in the present case, as he was not even known to the prosecutrix and the main accused is Parkash. Further, now the compromise has been effected between the petitioner and the complainant-prosecutrix and she has clearly stated that the petitioner is not responsible and his name has been given by her out of anger. The petitioner is behind bars since 19.07.2024 and he is not involved in any other case.

6. Ms. Jasleen Kaur, Advocate appears on behalf of respondent No.2 and files her *Vakalatnama* in the Court today, which is taken on record. She has no objection in case the petitioner is granted the concession of regular bail.

7. Learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner is owner of the shop, where

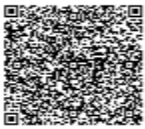


the alleged incident took place and there are ample evidence to indicate his complicity. Learned State counsel produces the custody certificate dated 10.11.2024 of the petitioner in the Court today, which is taken on record. However, she could not controvert the fact that the petitioner is not involved in any other case and investigation of the case is complete.

8. 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 19.07.2024 and the trial of the case will take long time in its conclusion as none, out of total 27 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.

9. 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.”

10. 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 Surender @ Bittu is ordered to be released on regular bail during trial on his furnishing bail/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

11. 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.

[HARPREET SINGH BRAR]
JUDGE

11.11.2024
vishnu

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