

CRM-M-58722-2024 (O&M)

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**214 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-58722-2024 (O&M)

Date of Decision: 28.11.2024

MOHD. GULAM @ GHOSH @ GOSA

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Chandan Singh Rana, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

Harpreet Singh Brar J.(Oral)

1. This is the first petition filed under Section 483 of BNSS seeking grant of regular bail to the petitioner in case bearing FIR No. 145 dated 07.12.2023 registered under Section 376 of Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act 2012 at Police Station Basti Jodhewal, Ludhiana.

2. Present FIR was registered on the statement of complainant Nasira Khatoon on the averments that she is a household lady. Her husband does work of tailoring and embroidery in the factory. She is having four children. The age of her elder daughter/prosecutrix is 17-18 years. Her daughter/prosecutrix used to remain at home. Mohd. Gulam alias Gosa (petitioner herein) is known to her, due to which he used to come to her room and keeps an evil eye upon her. On 10.10.2023 at about 11:00 am, her daughter went to bring something from the Karyana shop but did not return back. When she returned back to home, she disclosed her that petitioner had committed rape upon her without her consent. Thereafter, panchayat was

convened and in the panchayat, the petitioner refused to solemnize marriage with her daughter. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is behind the bars since 07.01.2024 and he has been falsely implicated in the present case on the basis of baseless and unfounded allegations. The FIR(supra) has been registered after a delay of 02 months from the date of alleged incident, which itself creates a serious dent on the integrity of the case set up by the prosecution and the medical examination of the victim-prosecutrix and her statement under Section 164 Cr.P.C. was recorded after a delay of more than 04 months from the alleged incident and she has made material improvements at the time of recording of her statement under Section 164 Cr.P.C. In fact the petitioner and victim-prosecutrix were having consensual relationship, which was opposed to the family of victim/prosecutrix and she was pressurized to make statement against the petitioner. Further in the ossification test conducted upon the victim/prosecutrix, she was declared to be of 17-20 years of age as discernible from the report Annexure P-4 and it is a trite law that for the purpose of determination of age on the basis of ossification test, the upper limit has to be considered.

4. Learned State counsel filed the custody certificate, which is taken on record and *per contra* opposes the prayer made by learned counsel for the petitioner on the ground that there are specific and serious allegations levelled against the petitioner. However, he could not controvert

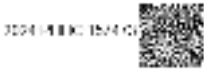
the fact that petitioner is not involved in any other case and he is behind the bars since 10.01.2024.

5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner is behind the bars since 10.01.2024 i.e. for 10 months and 17 days and out of total 17 prosecution witnesses, only 01 has been examined and 03 PWs have been given up. Therefore, the trial has not even reached the halfway mark. Culpability, if any, would be determined at the time of the trial. The petitioner 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."

6. In view of the above, the present petition is allowed and the petitioner-Mohd. Gulam @ Ghosh @ Gosa is ordered to be released on



regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

7. 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

28.11.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No