

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

CRM-M-59394-2024
Date of decision: 03.12.2024

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 483 of BNSS, 2023 seeking regular bail in case bearing FIR No.90 dated 04.04.2024 under Sections 304/376/313/120-B of IPC and Sections 3/4/5 of Medical Termination of Pregnancy Act, 1971 registered at Police Station Nuh, District Nuh (Annexure P-1).

The FIR (*supra*) was lodged on the statement of the complainant by alleging that on 27.03.2024, the sister of the complainant, namely, Filomina, went to the house of her brother-in-law, namely, Abhishek Kumar and on 28.03.2024, she left his home after saying that she is going to her office as she used to work in a private company in Gurugram and she never came back. Thereafter, on 03.04.2024, the complainant received a phone call from Nalhar Hospital and came to know about her death. On inquiry, he found that the accused/petitioner committed rape upon her on the pretext of marriage and when she got pregnant, the accused/petitioner got her admitted to Vaidik Hospital, Nuh to terminate her pregnancy, as a result of which, she died and



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thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that as per the case set up by the prosecution, the victim visited the house of her brother-in-law on 27.03.2024 and thereafter, she left on the next date by saying that she is going to her job. On 03.04.2024, a call was received that the victim has expired and her dead body is lying in Nalhar Medical Hospital. He further contends that neither there is any proof of pregnancy of the victim nor her abortion and the cause of death is unknown. There is nothing on record in the shape of WhatsApp chat, call record or any communication between the victim and the petitioner. The DNA report is still not placed on record, as such, there is no evidence to indicate the complicity of the petitioner to the alleged offence. The investigation is complete and final report under Section 193 of BNSS (earlier 173 of Cr.P.C.) is presented.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that specific role has been attributed to the petitioner and he has been named by name in the FIR (*supra*). She further submits that in view of the seriousness of the allegations, the petitioner deserves no leniency and he is the main accused. However, she could not controvert the fact that 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.”

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 07.04.2024. 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 only 01 out of 18 prosecution witnesses 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.

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-Rahoop is ordered to be released on regular bail during



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trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

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

03.12.2024
Neha

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