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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-58661-2024 (O&M)
Date of decision: 29.11.2024

Rachpal Singh @ Rashpal Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Puneet Kumar Bansal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 483 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking regular bail in
case bearing FIR No.156 dated 15.07.2017 under Sections 498-A, 406, 120-B,
201 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police
Station City Faridkot, District Faridkot.
2. The present FIR was registered on the basis of an application
moved by the complainant, on the allegations that her marriage was
solemnized with the petitioner on 26.02.2016, which was mediated by accused



No.4 & 5. After the marriage, she came to know that the petitioner was already married and his family had also a criminal background and a case under Sections 307, 498-A, 506 of IPC is pending against them in Police Station Malla Wala. On being asked regarding earlier marriage of the petitioner, accused No.4 & 5-mediators said that they had to earn money only and said to her to do whatever she want to do. Thereafter, accused No.1 to 3 started harassing her. Accused No.1 & 2 are habitual of taking drugs and after consuming drugs, accused No.1 used to beat her and accused No.2 & 3 helped him. On 12.06.2016, the accused persons, after giving beatings to her, turned her out of the matrimonial home and since then, she is living with her parents and they also threatened the complainant to abduct the girl by force. Her parents are very poor and accused No.4 & 5-mediators had cheated them. The accused pressurized to perform her marriage within a period of 15 days, on the pretext of sending her to Australia. It is further alleged that she and her family members are under fear that the accused persons could cause harm to their life and property at any time and for this, the accused would be responsible.

3. Learned counsel for the petitioner, *inter alia*, contends that FIR (*supra*) was registered in the year 2017 and the petitioner was granted the concession of regular bail by learned Chief Judicial Magistrate, Faridkot vide order dated 16.10.2017 (Annexure P-2) and he was regularly appearing before learned trial Court. On 14.11.2023, the petitioner could not appear before



learned trial Court, as he was hospitalized and an application seeking exemption from his personal appearance was moved, however, the same was dismissed and non-bailable warrants were issued against him. Due to his continuous ill-health, the petitioner could not appear before learned trial Court and he was declared as proclaimed offender on 14.08.2024 (Annexure P-3). It is further contended that the petitioner is now behind bars since 03.09.2024 and trial of the case is being delayed by the prosecution itself. The maximum sentence provided for the offences, under which the FIR (*supra*) is registered, is upto 07 years.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner has himself absented from the Court proceedings. Learned trial Court followed the proper procedure prescribed under Section 82 of Cr.P.C. (*now Section 84 of BNSS*) and recorded its satisfaction before declaring the petitioner as proclaimed offender.

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 03.09.2024 and the trial of the case has not even reached halfway mark, as out of total 15 prosecution witnesses, only 02 PWs have been examined and 02 PWs have been given up. 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 Rachpal Singh @ Rashpal Singh 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.

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.

29.11.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No