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

CRM-M-59487-2024

Date of decision: 03.12.2024

Mustkem alias Mustakeem

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Munfaid Khan, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 483 of BNSS seeking regular bail in case bearing FIR No.249 dated 30.11.2023 under Sections 376/506 of IPC registered at Police Station Nagina, District Nuh.

The FIR (*supra*) was registered on the statement of the complainant by alleging that on 27.11.2023 at around 09:00 A.M., when she was alone in her house, her brother-in-law (the petitioner herein) entered into her room and grabbed her from back and tried to commit rape upon her and thereafter, extended threats to kill her and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the prosecutrix in the present case is a mature lady of 21 years of age and there is an unexplained and inordinate delay of 03 days in reporting the matter to the jurisdictional police authorities which creates serious dent on the integrity of the case set up by the prosecution. The petitioner is the brother-in-law of the prosecutrix and after the medical examination of the prosecutrix, nothing suggestive of sexual assault has been found and further, the samples were never



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sent to FSL in this case. The petitioner is behind the bars since 22.12.2023 and from the perusal of the evidence available on record, *prima facie* case against the petitioner is not made out and the prosecution witnesses are not coming forward to depose before the learned trial Court. He further submits that bailable warrants against some of the accused and non-bailable warrants against the complainant have been issued by the learned trial Court.

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 the petitioner has been implicated by name and specific role has been given by the prosecutrix to him, as such, the petitioner deserves no leniency and the prosecution has already examined four witnesses and the period of incarceration undergone by the petitioner, cannot be a ground to grant him bail. However, he 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 22.12.2023. 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 04 out of 09 prosecution witnesses have 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-Mustkeem @ Mustakeem 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.

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