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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-59623-2024 (O&M)
Date of decision: 04.12.2024

Mahaveer Tanwar

... Petitioner

Vs.

State of Haryana

... Respondent

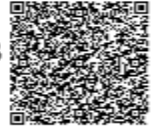
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rohit Kumar, Advocate and
Mr. Deepak Sharma, Advocate
for the petitioner.

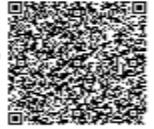
Mr. Vikas Bhardwaj, AAG, Haryana.

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.66 dated 25.01.2024 under Sections 323, 376(2)(n), 377,
506, 34 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police
Station Sector 58, District Faridabad.
2. The present FIR was registered on the basis of a complaint made
by the complainant, on the allegations that she was married to one Kishan

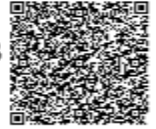


Mittal and out of the said wedlock, she has one minor child and after death of her husband, she started selling vegetables on *rehri* in the vegetable market at Gaunchhi, Ballabgarh, District Faridabad and the petitioner was running a hotel in the said market. The petitioner came in her touch and he told that his wife had already died and allured her to perform marriage with her and thereafter, he started living in her house from January, 2023 and used to make physical relations with her. Whenever she asked for the marriage, the petitioner avoided the matter on one pretext or another. On 10.05.2023, the petitioner took her to Court Complex, Faridabad and got prepared some documents in English language and obtained her signatures on the pretext that these are Court marriage documents. Thereafter, they started living together as husband and wife in the house of the complainant. After some time, conduct of the petitioner became cruel towards her and under the influence of intoxication, he used to beat her and also committed unnatural intercourse against her will. When she came to know about earlier marriage of the petitioner and living spouse and the fact that his wife had already filed many cases against him, she discussed this issue with him, upon which, he gave beatings to her mercilessly. On 23.07.2023, the petitioner, after giving beatings to her, left her alone by giving threats to her and started living with his children at Village Gaunchhi. Thereafter, she visited hotel of the petitioner to discuss the matter, however, accused No.2 Gagan Tanwar, who was also



present there, threatened to kill her, if she would tell about this to his father. On 29.07.2023, she recorded her statement before the police of Police Post Sikrona, but no action was taken. It is further alleged that the petitioner had stolen the documents of her property and he fraudulently got prepared an agreement for live-in relationship and affidavits instead of preparing court marriage documents. Thereafter, she made a complaint to CM Window on 01.08.2023 and the same was marked to Police Station Women Ballabgarh, which was sent to Police Post Sikrona, however, till date, no action has been taken on the said complaint. Without original agreement, the dealer, in collusion with the petitioner, stopped receiving the EMIs for the house purchased by her.

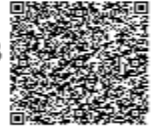
3. Learned counsel for the petitioner, *inter alia*, contends that the complainant is a mature lady of 34 years of age, having one child and she was in consensual relationship with the petitioner and they cohabited together in live-in relationship for a long period. Even one agreement was executed between both of them. On earlier two occasions, veracity of the allegations made by the complainant-prosecutrix was examined by the jurisdictional police authorities and her allegations against the petitioner were found false. The dispute between the petitioner and the complainant-prosecutrix is with regard to a property, which was purchased by the petitioner in the name of the complainant-prosecutrix and no specific date or place of commission of



alleged crime has been mentioned in the complaint under Section 156(3) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') (*now Section 175(3) of BNSS*) made before the jurisdictional Magistrate. The petitioner had been paying the installments towards repayment of the loan taken for purchase of property and even paying the school fee of child of the prosecutrix. Perusal of the record clearly indicates that *prima facie*, no offence under Section 376 of IPC etc. is made out. The petitioner is behind bars since 08.06.2024; he is not involved in any other case; investigation of the case is complete and final report under Section 173 of Cr.P.C. (*now Section 193 of BNSS*) has already been presented before the concerned jurisdictional Court.

4. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner had been sexually exploiting the complainant-prosecutrix by taking advantage of her vulnerable condition and there are serious and specific allegations against him. Learned State counsel produces the custody certificate dated 03.12.2024 of the petitioner in the Court today, which is taken on record. However, he could not controvert the fact that the petitioner is not involved in any other case.

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 for the last 05 months and 26 days as on 03.12.2024 and trial of the case is likely to take long time in its conclusion, as none out of 18

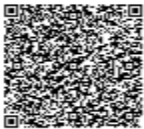


prosecution witnesses has been examined so far. The culpability, if any, would be determined at the time of trial. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

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 Mahaveer Tanwar 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.

04.12.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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