



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

CRM-M-60090-2024
Date of decision: 05.12.2024

NufaPetitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Namit Khurana, 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.09 dated 10.01.2024 under Sections 354/376/506/376(2)(n)/376(D)/506 of IPC registered at Police Station Cheeka, District Kaithal.

The FIR (*supra*) was registered on the statement of the complainant by alleging that the accused/petitioner used to do indecent acts with her on the way and about two and a half years ago, when she had gone to Cheeka, the accused/petitioner came and forcibly made her to sit on his motorcycle and took her to his office at New Anaj Mandi Cheeka and committed wrong act with her. It is further alleged that the cousin of the accused/petitioner was also present there and he also committed wrong act with her and extended threats to kill her and her family if she disclosed the incident to anyone. Thereafter, the complainant along with her kids shifted to Kaithal but the accused/petitioner came to know her whereabouts and then again reached Kaithal and harassed her and also snatched her earrings, chain and ring and thus, the instant FIR got registered.



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Learned counsel for the petitioner *inter alia* contends that the FIR (*supra*) was registered after a delay of more than two years which itself creates serious doubt on the case set up by the prosecution. Further, no specific date and time has been mentioned and the prosecutrix is a mature and married lady having three children and the allegations that the petitioner had taken her on his motorcycle to his office in the Grain Market and thereafter, committed rape upon her, are totally unbelievable. He further submits that the place of incident is densely populated area and the story prepared by the prosecutrix is totally false and concocted. The petitioner was having consensual relationship with the prosecutrix which is discernible from the photographs (Annexure P-3) and the signatures of the prosecutrix on the register of the Hotel Sunshine and the FIR (*supra*) was registered just to extract money from the petitioner. The petitioner is behind the bars since 16.03.2024 and he is not involved in any other case.

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 there are serious allegations of forcible rape under threat and prosecutrix has been examined who has duly supported the case of the prosecution, as such, the petitioner is not entitled to any relief.

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



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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 16.03.2024. 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 even reached halfway mark as only 01 out of 22 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-Nufa 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

05.12.2024
Neha

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