

**CRM-M-60550-2024 (O&M)****-1-****209 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRM-M-60550-2024 (O&M)****Date of Decision: 09.12.2024****MEHMOOD @ MAHMOODA KHAN****...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)**

1. This is the first petition filed under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 seeking grant of regular bail to the petitioner in case bearing FIR No. 31 dated 09.11.2015 registered under Sections 365-D, 376-D and 342 of Indian Penal Code at Women Police Station Nuh, District Nuh.

2. The FIR(supra) was registered on the complaint moved by complainant namely Wxxx alleging therein that on 19.10.2015, his aunt Hxxx fought with her for some work, due to which she got irritated and on 20.10.2015, when she reached near Joly Mor, Ferozepur Jhirka, two motorcyclists came there and forcibly took her away. They were three men namely Kasam, Aabadi and Mehmooda (present petitioner). They locked the complainant in a room and raped her and then Mehmooda took her away on motorcycle and committed rape upon her continuously. She further submitted that thereafter Aabadi took her away from Ferozepur Jhirka to Bus Stand, where she saw her uncle and father and shouted to save herself

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from the clutches of accused persons. She requested to take action against the accused persons. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that petitioner has been falsely implicated in the present case and there is an unexplained delay of 17 days in registration of FIR(supra), which creates a serious doubt on the case set up by the prosecution. Further the allegations with regard to committing rape upon the prosecutrix were levelled against three persons namely Kasam, Abadi and present petitioner and identically placed co-accused Abadi has been acquitted by learned trial Court vide judgment dated 25.07.2017 (Annexure P-2) and at the time of alleged occurrence, prosecutrix was a mature and married lady of 20 years of age and investigation of the case is complete and petitioner is behind the bars since 02.07.2024 and not involved in any other case. Learned counsel for the petitioner lastly contends that there is no medical corroboration to the allegations levelled by the victim/prosecutrix.

4. Learned State counsel filed the custody certificate, which is taken on record and *per contra* opposes the prayer made by learned counsel for the petitioner on the ground that there are serious and specific allegations levelled against the petitioner and as such, he is not entitled to any relief by this Court. However, he could not controvert the fact that petitioner is not involved in any other case.

5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner is behind the

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bars since 02.07.2024 i.e. for 05 months and 05 days as on 06.12.2024 and out of total 14 prosecution witnesses, none has been examined so far, qua the petitioner. Culpability, if any, would be determined at the time of the trial. 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.”

6. In view of the above, the present petition is allowed and the petitioner-Mehmood @ Mahmooda Khan is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

7. 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

09.12.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No