

**CRM-M-61284-2024 (O&M)****-1-****208 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRM-M-61284-2024 (O&M)****Date of Decision: 11.12.2024****ANIL KUMAR****...Petitioner****Versus****STATE OF HARYANA AND ANOTHER****...Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Ekta Chauhan Advocate with
Mr. Bhanu Chaudhary, Advocate for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

*********HARPREET SINGH BRAR J.(ORAL)**

1. The present petition has been filed under Section 439 of Cr.P.C./Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No. 64 dated 18.07.2024 under Sections 70(1), 123, 351(3) and 3(5) of the Bhartiya Nyaya Sanhita, 2023 (for short 'BNS') registered at Women Police Station Hansi, District Hisar.

2. The present FIR was registered on the basis of an application moved by the complainant-victim, on the allegations that few days ago, she went to Yuduvanshi School, Garhi to inquire about the work, where she met one female sanitary worker, who gave contact number of co-accused Parkash and when she contacted him for sanitary work, he told her that there were holidays in the school and he assured to get job for her and also for her husband after the holidays or her son would be admitted in the school. He further assured the complainant that she would get a room to stay in the school itself. After the holidays got over, Parkash called her to

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the office of the school at Hansi and told that she would have to work there for one or two days and thereafter, she would get the job in the school. On 18.07.2024 at about 09.00 a.m., Parkash called her and thereafter, he along with one Anil (petitioner herein) took her in an auto from near Jind Chowk to a shop at Bhagat Singh Road, Hansi, where Surender, owner of a cycle shop was also present. All of them made her to drink beer (alcohol) and committed rape upon her one by one. Thereafter, they made her to sit in an auto and threatened her not to disclose about the incident to anyone, otherwise they would kill her and her entire family.

3. Learned counsel for the petitioner *inter alia* contends that similarly situated co-accused Surender @ Bittu has been granted the concession of regular bail by this Court on 11.11.2024 passed in CRM-M-53612-2024 (Annexure P-5). He further contends that prosecutrix is a mature and married lady of 26 years of age and the case set up by the prosecution is too far fetched and improbable. The perusal of the FIR(supra) indicates that the incident took place in the broad daylight at 9.00 AM in the shop of the co-accused located in a busy market place. Admittedly, the prosecutrix has not raised any hue and cry and according to her own version she had left the place of occurrence in an auto rickshaw without informing anyone about the alleged incident. Petitioner has been falsely implicated in the present case and he was not even known to the prosecutrix and the main accused is Parkash. Further, now a compromise has been effected between the petitioner and the complainant and she has stated that petitioner is not responsible and his name has been given by her



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out of anger. The petitioner is behind the bars since 19.07.2024 and not involved in any other case.

4. Mr. Kanhiya Goyal, Advocate has put in appearance on behalf of respondent No. 2 and filed his memo of appearance. Same is taken on record. Learned counsel for respondent No. 2 submits that he has no objection, in case the petitioner is enlarged on regular bail.

5. 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 there are sufficient evidence available on record to indicate the complicity of the petitioner. However, she could not controvert the fact that petitioner is not involved in any other case and investigation of the case is complete.

6. 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 19.07.2024 and the trial of the case will take long time in its conclusion as none, out of total 27 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.

7. 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.”

8. 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- Anil Kumar 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.

9. 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

11.12.2024
Ajay Goswami

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