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

CRM-M-62532-2024

Date of decision: 18.12.2024

Mantar Singh alias Happy

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Arshdeep Singh Brar, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 483 of Bharatiya
Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR
No.183 dated 30.11.2023 under Sections 376/376-D/506 of IPC registered at
Police Station Sadar Kotkapura, District Faridkot (Annexure P-1).

The FIR (*supra*) was registered on the statement of the
complainant by alleging that she was married to Akashdeep Singh about five
years ago and out of this wedlock, one female child was born. On 29.11.2023,
at about 08:00 P.M., she had a minor altercation with her husband and in-laws
due to which she wanted to leave her matrimonial home with her daughter and
wanted to go to her parental house. Thereafter, she went to her neighbour and
called her brother, Manpreet Singh alias Happy informing him about everything
and requested him to take her. When she was going towards the bus stand, she
encountered Labh Heera alias Lucky and explained the situation to him and he
took her on his motorcycle towards Devi Wala Road. Thereafter, in front of a
tubewell shed near the fields, he forcibly raped her against her wishes and



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called his friend, namely, Mantar Singh alias Happy (the petitioner herein) and told him that they would drop her off at Kotkapura and the accused/petitioner arrived on the road with them on his motorcycle and about one kilometer ahead, they stopped the motorcycle near another tubewell room and both raped her and extended threats to kill her if she disclose the incident to anyone and thus the FIR (*supra*) was registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. The prosecutrix and the petitioner are co-villagers and petitioner is a friend of the husband of the prosecutrix and due to her dispute with her husband, she has framed the petitioner in a false case for supporting her husband. He further submits that the prosecutrix is a mature and major lady of 22 years of age and there are stark contradictions between the statement of the prosecutrix recorded under Sections 161 of Cr.P.C. and 164 of Cr.P.C. and the material witness has already been examined as PW-1. The petitioner is behind the bars for the last one year and even the DNA report is negative *qua* the complicity of the petitioner.

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 and specific allegations against the petitioner with regard to committing rape upon the prosecutrix and she has duly supported the case of the prosecution while appearing as PW-1. However, he could not controvert the fact that the petitioner is not involved in any other case and that the petitioner is behind the bars for the last one year.

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 04.12.2023. 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 03 out of 18 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.



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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-Mantar Singh @ Happy 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

18.12.2024*Neha*

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