



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRA-S-2827-2024 (O&M)
Date of decision: 23.01.2025

Ankush
.....Appellant

Versus

State of Haryana and another
.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sunil Kumar Goswami, Advocate
for the appellant.

Mr. Vikas Bhardwaj, AAG, Haryana.

None for respondent No.2.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in the instant appeal is for setting-aside the order dated 31.07.2024 passed by the learned Additional Sessions Judge, Jind, vide which the concession of regular bail to the appellant has been declined. Further prayer has been made to grant the concession of regular bail to the appellant in FIR No.111 dated 03.04.2024 registered under Sections 307, 323, 341, 506, 34 IPC and Sections 3(2)(va), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short 'the SC/ST Act'), at Police Station Sadar, Jind, District Jind.
2. The brief facts of the case are that a complaint was filed by Smt. Sarita regarding her husband, Rajesh, who went missing after attending a wedding in village Radhana on 31.03.2024. Rajesh was last

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seen returning home on his bicycle around 9:30 PM. After searching for him without success, Sarita approached the police on 03.04.2024. Rajesh later provided a statement indicating that he had been attacked by three individuals, one of whom he identified as Vijay @ Fauji. The assailants, motivated by a previous altercation at the wedding, assaulted him and threw him into a well, covering it with bushes. Rajesh lost consciousness and was rescued on 05.04.2024, by Anand Rathi @ Nandu, in the presence of police. Thereafter, the impugned FIR was registered.

3. Learned counsel for the appellant *inter alia* contends that the appellant was not named by the injured/victim Rajesh when his statement was recorded by the Investigating Officer. He submits that the victim is well acquainted with the appellant as they are from the neighbouring villages yet he was not named as one of the assailant and he has only named one Vijay @ Fauji in the FIR.

4. Learned counsel for the appellant further submits that the appellant has been nominated as an accused in the case after 20 days, on the basis of the disclosure statement made by the co-accused while in police custody and the said statement has no evidentiary value as the same is hit by Section 25 of the Indian Evidence Act and the appellant is behind the bars since 01.06.2024.

5. *Per contra*, learned State counsel has produced status report by way of affidavit of Jitender Singh, Deputy Superintendent of Police, Jind, Law and Order, Jind and also filed custody certificate,

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which are taken on record and he opposes the prayer made by learned counsel for the appellant on the ground that it has been established during the course of investigation that the appellant along with the co-accused Vijay @ Fauji had thrown the victim Rajesh into a well, which 25-30 ft. in depth and he remained there for 4-5 days and suffered serious injuries, however, he could not controvert the fact that the investigation is complete and out of 28 prosecution witnesses, only 01 PW has been examined till date.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the appellant is in custody for the last 07 months and 20 days and the trial of the case will take long time in its conclusion as out of 28 prosecution witnesses, only 01 PW has been examined so far. The culpability, if any, would be determined at the time of trial. Keeping the appellant 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 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,

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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. Accordingly, without commenting upon the merits of the case, the present appeal is allowed, the order dated 31.07.2024 is set-aside and the appellant Ankush is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court/Duty Magistrate.

9. Nothing observed hereinabove shall be construed to be expression of an opinion by this Court on merits of the case. The learned Court below is directed to proceed with the matter on its own merits, lest it may prejudice the trial.

(HARPREET SINGH BRAR)
JUDGE

23.01.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No