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

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Date of Decision : 13.01.2025

USHA RANI

.... PETITIONER

V/S

STATE OF PUNJAB

.... RESPONDENT

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Sahil Soi, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (Oral)

1. The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No.28 dated 10.03.2024 under Sections 376, 315, 316, of IPC (Section 376 of IPC deleted and 376(3), 506, 201, 120-B of IPC added and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') deleted lateron and Section 17, 21 of POCSO Act added later on) registered at Police Station Nakodar Sadar, District Jalandhar Rural.

2. Brief facts of the case are that present case was registered on the statement of complainant to the effect that she was a labourer. Her marriage was solemnized about 22 years ago. Her husband had died in the year 2018. She was blessed with four children. Her eldest daughter was married. The son younger to her was 18 years old who was also a labourer. One of her daughters who was aged 17 years was studying in



12th standard while her youngest daughter, who was 14 years old was studying in 9th standard in a government school in the village. She further stated that Harpreet Singh son of her sister-in-law had come to their village about one year ago for learning to drive JCB machine. He started residing with them in their house. About a month ago, he went back to his village. She further stated that in December 2023, her daughter started remaining sick. She got her ultrasound done from Civil Hospital, Jalandhar where she came to know that her daughter was pregnant. She returned back home with her daughter who told her that in June 2023 when complainant along with her son had gone to do work and her elder daughter had gone to school, she herself did not go to school and stayed back with Harpreet Singh who forcibly committed rape upon her. He also threatened her with dire consequences and warned her not to report the matter to her family members. As she was afraid, she kept quiet and did not tell about his act and conduct members. After about a week, on Sunday when complainant and her son had gone out of the house in connection with some work and victim's elder sister had gone to Church, then Harpreet Singh again committed rape upon her. He further threatened to eliminate her in case she narrated the incident to any of her family members. Thereafter the complainant narrated the entire incident to her sister-in-law and her husband. In February 2024, she took her daughter to Chhabra Hospital where the doctor told her that her daughter was pregnant. As she was afraid of losing reputation in the society, she did not talk regarding the said incident with anybody. On 08.03.2024, her sister-in-law, along with her husband telephonically called her and told



her that they had talked to Usha Rani who was a nurse who would help in normal delivery of her daughter. They assured her that she had earlier also handled many delivery cases. Thereafter both of them took her daughter to Usha Rani's house who admitted her for delivery. Complainant also went to the house of Usha Rani who told them that she would take an amount of 25,000/- for normal delivery. Consequently, her sister-in-law and her husband gave 15,000/- in advance to Usha and promised to give her the remaining amount of 10,000/- after delivery. Usha kept her daughter in her house for the entire night and started giving her medical treatment for normal delivery. On 09.03.2024, the movement of the child in the womb of her daughter stopped consequent upon which Usha told them to get victim's ultrasound done. After going through the ultrasound report, Usha recommended the complainant to take her daughter to a private hospital. Thereafter she alongwith her sister-in-law and her husband took the victim-prosecutrix to a private hospital where the doctor refused to give any medical treatment to her daughter. So, she alongwith her sister-in-law and her husband took her to Chhabra Hospital where her daughter was operated upon and she gave birth to a stillborn child. She further stated that Harpreet Singh son of Darshan Singh resident of village Sangowal, District Jalandhar had committed rape upon her daughter and due to the negligence of Usha Rani, her daughter lost her child. She finally prayed that appropriate action may be taken against Harpreet Singh and Usha Rani.

3. Learned counsel for the petitioner *inter alia* contends that this is the 2nd bail application seeking grant of regular bail. The 1st



application was dismissed as withdrawn on 22.07.2024. The present petition is filed with change in circumstances and the material witness has now been examined.

4. Learned counsel for the petitioner further submits that the petitioner has been falsely implicated. In fact, the prosecutrix was raped by her own cousin. She has been getting treatment from Chhabra Hospital, Nakodar. The same fact mentioned in the FIR (supra) itself. Now the complainant and victim prosecutrix have both deposed before the learned trial Court and they have not supported the case of prosecution and they have been declared hostile by the learned Public Prosecutor. The petitioner has been acquitted and he has placed reliance upon the judgment of acquittal annexed as Annexure P-2.

5. Custody certificate filed by learned State counsel is taken on record.

6. Per contra, the learned State counsel opposes the prayer made by the petitioner on the ground that the petitioner is mid wife and she has taken Rs.25,000/- for abortion. Specific and serious allegation against the petitioner, however, he could not controvert the fact that he is not involved in any other case.

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. 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 02.03.2021. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court. Charges were framed and trial of the case has not made much progress. Out of 21 prosecution witnesses, 11 witnesses are yet to be examined. 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.

9. Keeping in view the law laid down by the Hon’ble Supreme Court of India in ‘Prabhakar Tewari Vs. State of U.P. and another’ 2020 (1) R.C.R. (Criminal 831) and ‘Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another’, 2012 (2) SCC 382, the involvement of the



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petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

10. 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- Usha Rani is ordered to be released on regular bail during trial on her furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

11. 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.

13.01.2025

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(HARPREET SINGH BRAR)
JUDGE

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