

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

CRM-M-5281 of 2022 (O&M)

Date of Decision: 05.01.2023

Gursewak Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Nakul Sharma, Advocate
for the petitioner.

Mr. Digvijay Nagpal, AAG, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No. 83 dated 17.8.2021 under Sections 306,34 of the Indian Penal Code, 1860, registered at Police Station Mamdot District Ferozepur.

2. Learned counsel for the petitioner *inter alia*, contends that FIR was registered against four accused. Two co-accused had been granted anticipatory bail and one co-accused was granted regular bail by this Court. The petitioner is in custody since 18.8.2021. The petitioner has solemnized love marriage with the deceased and on account of opposition by family of both sides, the petitioner was staying out of village for quite long time. The petitioner came back to village about 2-3 months back from the date of alleged incident. It was the petitioner who had taken away deceased to

hospital and not the complainant and other family members. The challan has already been presented, charges stand framed and key prosecution witnesses have been examined which include complainant, mother and uncle of the deceased. None of the prosecution witness has supported case of the prosecution. The petitioner has deep roots in the society. There is no possibility of flee from justice.

3. Learned State Counsel submits that police report has already been filed and charges stand framed. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

4. 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.”

5. Intent of arrest and reason of denial of bail is to:

- i) Secure the appearance of the accused at the time of trial;
- ii) Allay possibility of repeating of offence & jeopardising own life on account of grim prospect of being convicted;
- iii) Avoid possibility of tampering of evidence and security of witnesses who may be pressurised or maltreated.

6. A person who seeks to be liberated must take judgment and serve sentence in the event of his conviction. The nature of the crime charged, severity of punishment prescribed, prime facie available evidences, history & background of the accused may indicate that any amount of bond and surety is not going to secure presence of accused, at the time of conviction. Detention or arrest not only deprives a person from his fundamental right of personal liberty guaranteed by Article 21 but also freedom guaranteed by article 19(1) of our Constitution.

7. Keeping in mind:

- i) The Petitioner is in custody since 18.8.2021;
- ii) Police report under section 173 of Cr.P.C. stands filed and charges stand framed;
- iii) The key prosecution witnesses stand examined who have not supported case of the prosecution;
- vi) Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act , Companies Act are not applicable in the case in hand;
- vii) The Petitioner is not involved in any other criminal case;
- viii) The Petitioner is permanent resident of Ferozepur and

having family members;

ix) Prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of Petitioner being flee from justice or tempering the evidences or winning over/threatening the witnesses;

x) The co-accused have already been granted anticipatory bail and regular bail;

this Court is of the considered opinion that present petition deserves to allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by trial Court/Illaqa/Duty Magistrate concerned.

(JAGMOHAN BANSAL)
JUDGE

5.1.2023
paramjit

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