IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

221 **CRM-M-12354-2022**
Date of Decision: 24.01.2023

Kuldeep **…Petitioner**

Versus

State of Haryana **…Respondent**

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Raman Chawla, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No.131 dated 28.03.2019 under Sections 304-B, 498-A & 34 of IPC, registered at Police Station HTM, Hisar.

2. Learned counsel for the petitioner, *inter alia* contends that petitioner is in custody since 31.03.2019. As per FSL report, the deceased has not committed suicide by consuming poison. The petitioner is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Hisar. The petitioner has deep roots in the society. There is no possibility of flee from justice.

3. Custody certificate dated 23.01.2023 is taken on record. Registry is directed to tag the same at appropriate place.

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4. Learned State Counsel submits that all the prosecution witnesses stand examined and trial is fixed for defence evidence. She does not dispute the fact that petitioner is not involved in any other offence, however, further submits that petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

5. 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."*

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

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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; and

iii) Avoid possibility of tampering of evidence and security of witnesses who may be pressurised or maltreated.

7. 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.

8. Keeping in mind:

i) The Petitioner is in custody since 31.03.2019;

ii) Police report under section 173 of Cr.P.C. stands filed, charges stand framed;

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iii) There are 18 prosecution witnesses and all stands examined;

iv) As prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody;

v) Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act, Companies Act are not applicable in the case in hand;

vi) The Petitioner is not involved in any other criminal case;

vii) The Petitioner is permanent resident of District Hissar;

viii) 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;

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.

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Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

24.01.2023
Mohit Kumar

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*

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