

CRM-M-18547-2023
Date of decision: 30.11.2023

Versus

State of Punjab ...Respondent

Present: Mr. J.S. Grewal, Advocate and
Mr. Rahul Arora, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in a case bearing FIR No.154 dated 10.09.2022 under Section 115 read with 302, 120-B of IPC and Section 25 of Arms Act, 1959 registered at Police Station City Nawanshahr, District S.B.S. Nagar (Annexure P-1).

The FIR was registered on the basis of secret information received by Inspector who was present along with other police officials outside the gate of complex of CIA Staff, on the allegations that Rohit Kumar @ Shamma, Om Bahadur @ Sahil along with their companions, namely, Rajinder Singh @ Nandi, Gurpreet Singh @ Gopi, Ranjodh Singh @ Jodha, Shashi Kumar and Rupesh Kumar (the present petitioner) after conniving with each other on the asking of Amritpal Singh, now resident of USA, in order to commit murder of some person, armed with illegal arms were roaming in the area of Nawanshahr

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on Scooter bearing registration No.PB09AB1695 and Motorcycle bearing registration No. PB32Z7604.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and he is behind the bars since 10.09.2022 and recovery of 01 country made pistol along with 05 live cartridges were planted on him. The investigation is complete. There is nothing on record to suggest that the offence of abetment within the meaning of Section 115 of IPC is made out against the petitioner. He further relies upon the order dated 09.02.2023 (Annexure P-3) passed by this Court in CRM-M-60493-2022 (O&M) titled as 'Gurpreet Singh @ Gopi Vs. State of Punjab' vide which the co-accused-Gurpreet Singh @ Gopi was granted the concession of regular bail. It is further submitted that the petitioner is already on bail in all other cases. Even the co-accused-Gurpreet Singh @ Gopi who was granted regular bail by this Court was involved in other cases.

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner and refers to the status report filed on 15.05.2023 on the ground that he is involved in five more cases which are pending trial and in case, the petitioner is released on regular bail, he might influence and threaten the prosecution witnesses in all these cases.

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 records of the case, it transpires that the petitioner is behind the bars since 10.09.2022. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 09.11.2022 and trial of the case has not made much progress as only 03 out of 17 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 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 petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

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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-Rupesh Kumar is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Il-laqa 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

30.11.2023*Neha*

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