

CRM-M-23504-2023
Date of decision: 11.12.2023

Versus

State of Haryana ..Respondent

Present: Mr. Vimal Kumar Gupta, Advocate and
Ms. Kajal, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

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.1374 dated 14.11.2020 under Sections 302/449/34/120-B of IPC and Section 25 (1-B) (a) of Arms Act, 1959 registered at Police Station Shivaji Nagar, Gurugram Nagar.

The present FIR was lodged on the statement of complainant- Karan Kumar on the allegation that one, Golu used to live along with his family in the rented accommodation of the complainant in Gandhi Nagar, Gurugram. There was an argument between Golu and the brother of complainant, namely, Gaurav. Golu has threatened Gaurav with dire consequences and due to this dispute, Golu started living separately. On 14.11.2020, the complainant along with his brother, Gaurav and his brother-in-law, Rakesh Singh, were celebrating Deepawali Festival on the roof of their house and at about 05:30 P.M., Golu with one unknown person came there and started talking to his brother, Gaurav

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and they both started consuming liquor. After some time, Golu started abusing Gaurav due to the earlier dispute and on being objected by Gaurav, friend of Golu, namely, Hariom Sikrwar (present petitioner) caught hold him and Golu took out the weapon and fired upon the brother of complainant, namely, Gaurav, resultantly, his brother fell down after receiving gun shot and in the meantime, Golu and his friend fled away from the spot.

Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR and he has been falsely implicated in the present case on the basis of disclosure statement made by the main accused, Golu, while in police custody which is hit by the provisions of Section 26 of the Indian Evidence Act and has no value in the eyes of law. He further submits that identity of the petitioner is not established as complainant has not come forward to identify the petitioner during the test identification parade. The petitioner is alleged to have caught hold of the deceased when the main accused, Golu, fired upon him and his involvement with the aid of Section 34 of IPC would be a moot point to be determined by the trial Court.

Per contra, the learned State counsel seeks dismissal of the regular bail to the petitioner on the ground that he is a habitual offender and involved in three more 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 29.12.2020. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as only 16 out of 24 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.

The foundational concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last Court.

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It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play.

In this regard, reference is being made to the law laid down by the Hon'ble Supreme Court in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- **Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao vs. State of Karnataka, (2002) 4 SCC 578, Babu Singh and others vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh vs. State of U.P. (2JJ.) and Fazal vs. State of Uttar Pradesh, (2012) 5 SCC 752.**

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.

Ergo, I am inclined to allow the prayer of the petitioner. Accordingly, the present petition is allowed. The petitioner-Hariom Sikrwar is

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ordered to be released on regular bail during trial on his furnishing bail bonds/ surety bonds to the satisfaction of the concerned Illaqa Magistrate/Trial Court/ Duty Magistrate.

The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case lest it may prejudice the outcome of the case pending before the 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

11.12.2023
Neha

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