

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

266

CRM-M-43216-2020

Date of Decision: 20.01.2023

Paramjeet Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Karanjeet Singh Brar, Advocate for the petitioner

Mr. Amish Sharma, 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.242 dated 09.07.2020 under Sections 307 & 34 of IPC (offence under Section 302 IPC incorporated vide order dated 26.11.2021 passed by Additional Sessions Judge, Fazilka), registered at Police Station Sadar Fazilka, District Fazilka.

2. Mr. Karanjeet Singh Brar, Advocate appeared on behalf of the petitioner and filed his Vakalatnama with no objection from earlier counsel. The same is taken on record and Registry is directed to tag at appropriate place.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner was having warm relations with his wife. The police initially registered FIR under Section 307 & 34 IPC and later on Section 302 was inserted whereas challan came to be presented under Section 306 IPC.

The police in its investigation has found that it was deceased who had

bought oil which was used in the commission of alleged crime. It was petitioner who had got admitted the deceased in hospital and thereafter, followed her treatment. The petitioner is in custody since 17.08.2020. The petitioner is not involved in any other offence. The petitioner is having two minor children and there is nobody to look after them. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Fazilka. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 25.04.2022 is already on record, which shows that petitioner is in custody since 18.08.2020 and petitioner is not involved in any other offence.

5. Learned State Counsel submits that challan stands filed, however, charges are yet to be framed. He further submits that there are total 22 witnesses. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

6. 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.”

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

8. 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.

9. Keeping in mind:

- i) The Petitioner is in custody since 17.08.2020;
- ii) Police report under section 173 of Cr.P.C. stands filed, however till date charges are not framed;
- iii) There are 22 prosecution witnesses, thus, there is abysmally low possibility of conclusion of trial in near future;
- 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 Fazilka;
- 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;
- ix) The petitioner is in custody since 17.08.2020 and till date even charges are not framed and petitioner cannot be kept in custody for indefinite period.

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.

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

20.01.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>