

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

CRM-M-43874-2023 (O&M)

Date of Decision: 21.12.2023

DILBAGH SINGH**...Petitioner****V/S****STATE OF PUNJAB****...Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present: Mr. G.S. Bawa, Advocate
for the petitioner.

Mr. Madhur Sharma, AAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. This is the first petition under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 35 dated 09.04.2023 registered under Sections 302, 506, 148 and 149 of Indian Penal Code (Sections 302, 506 and 149 were deleted and offences under Section 304 of IPC was added vide Rapat No. 28 dated 18.05.2023) at Police Station Kathu Nangal, District Amritsar.

2. The present FIR was lodged on the statement of the complainant Jatinder Kumar on the allegations that on 09.04.2023 at around 5.30 PM, when he was stitching cloths in his house, he heard noise in the street and when he came out, he saw Fateh Singh, Amandeep Kaur, Harjit Singh @ Jeeta, Paramjit Singh, Pritam Singh, Dilbagh Singh (present petitioner), Heera, Sanjeev Bhaskar, Vikram Gill along with 6-7 unknown persons were scuffling with his father Rattan Lal, due to which his father fell down on the ground and complainant and his wife tried to rescue his father from the accused, but accused persons started giving kick blows in the stomach of his father, while he was lying on the ground. After they raised alarm, many people gathered there and all the

accused persons fled away from the spot and after arranging vehicle, the complainant took his father to Ranjit Hospital Kathu Nangal, where the doctor declared him as brought dead.

3. Learned counsel for the petitioner *inter alia* contends that initially the FIR was registered under Section 302 of Indian Penal Code but thereafter, during the course of investigation, offences under Sections 302, 506, 149 of Indian Penal Code were deleted and offence under Section 304 of IPC was added vide DDR No. 28 dated 18.05.2023. He further contends that no specific injury has been attributed to the petitioner and in the MLR only two injuries i.e. abrasions are found on the left side of the nose and under the left eye of the deceased. Further the Investigating Agency has declared 03 persons as innocent while filing final report under Section 173 of Cr.P.C. The medical evidence is contradictory to the ocular evidence. In the opinion given by the doctor, following was observed:

“After going through the gross findings of PMR, Chemical Examiner Report vide No. 1863 dated 07.06.2023 and Histopathology report No. 1332 23 dated 27.05.2023, no definite cause of death can be attributed in this case. However, possibility of neurogenic shock as a result of injuries likely to cause death cannot be ruled out.”

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that he has actively participated in the occurrence, in which the deceased Rattan Lal had died and the Investigating Agency has collected sufficient material to prove the complicity of the petitioner in the alleged occurrence and produced the custody certificate, which is taken on record.

5. Having heard learned counsel for the parties and perusing the record of the case, it transpires that the petitioner is behind the bars since 10.04.2023. Investigation of the case is complete and the final report under Section 173 Cr.P.C. was presented before the concerned Court on 07.06.2023. The trial of the case has not made much progress as out of 20 cited prosecution witnesses, none has been examined so far. Culpability, if any, would be determined at the time of trial.

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. In view of the above, the present petition is allowed and the petitioner- Dilbagh Singh is ordered to released on regular bail subject to

his furnishing requisite bail bonds/surety bonds to the satisfaction of the

concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

8. 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.

21.12.2023
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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