

210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50148-2023

Date of decision: 18.12.2023

ALOK @ AALOK @ ALOK KUMAR

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Vasundhara Dalal Anand, Advocate with
Mr. TPS Bawa, Advocate for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

The prayer in the present petition is made for grant of regular bail in case FIR No.240 dated 14.10.2022 registered under Sections 307 and 34 of Indian Penal Code (subsequently Section 307, 34 of IPC have been deleted and Section 302 of IPC has been added) registered at Police Station Manesar, District Gurugram.

2. The FIR was lodged on the allegations that on 13.10.2022 at about 7:00 AM, the deceased had gone to attend his duty in the company, he was employed, but he did not return till evening. When, his wife called him, some unknown fellow attended the call and told her that the deceased would return by 10:30 PM, however, he did not return home. On 14.10.2022, brother of the deceased received a call from local police that deceased is lying admitted in the Government Hospital, Sector 10, Gurugram on account of injuries. The deceased was further referred to Safdarjung Hospital, Delhi. When complainant (brother of deceased) reached there, he found that his brother had sustained grievous injuries in the head and he apprehended that some unknown

persons had made an attempt to kill his brother. On 18.10.2022, the deceased succumbed to his injuries and the offence under Section 302 of IPC was added. During investigation, the petitioner was arrested and mobile phone of the deceased was recovered from his possession, pursuant to disclosure statement made by him.

3. Learned counsel for the petitioner *inter alia* contends that petitioner has been falsely implicated in the present case. There is no other evidence except the CCTV footage of a liquor vend, where the petitioner and deceased purchased the liquor and learned counsel referred to the payment receipt of the liquor vend (Annexure P-3) to contend that the deceased purchased the liquor on 13.10.2022 at 6:59 PM, whereas the petitioner purchased liquor on 6:57 PM. One more person namely Pardeep Kumar also purchased the liquor from the said vend at 7:00 PM. The CCTV footage relied upon by the investigating officer is of the liquor vend, where petitioner along with deceased and other customers had purchased the liquor. There is nothing on record against the petitioner and it is sheer co-incidence that petitioner was present at the liquor vend at the same time, when the deceased went to purchase the liquor. The recovery of mobile phone from the petitioner has been planted, as the perusal of the recovery memo would indicate that it was recovered one day prior to the date of the remand of the petitioner by the concerned Illaqa Magistrate. Moreover, the complainant has not supported the prosecution version and he was declared hostile.

4. Per contra, learned State counsel opposes the grant of bail to the petitioner on the ground that the investigating agency has collected sufficient material to connect the petitioner with the alleged occurrence. The call detail

record obtained during investigation clearly indicates that the petitioner and deceased have exchanged calls on the date of occurrence.

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. Having heard the learned counsel for the parties and after perusing the record, it transpires that the petitioner is in the custody since 21.10.2022 and the trial of the case is progressing at snail's pace as only 4 out of 24 witnesses cited by the prosecution, have been examined so far. The culpability, if any, of the petitioner would be seen at the time of the trial. Keeping the petitioner in further detention, without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

7. Accordingly, the present petition is allowed. The petitioner Alok alias Aalok alias Alok Kumar is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the CJM/Duty Magistrate concerned.

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.

December 18, 2023
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No