

CRM-M-59035-2023
Date of decision: 29.11.2023

Versus

State of Hrayana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Vikas Bhardwaj, AAG, 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.423 dated 12.12.2022 under Sections 147/148/149/323/379-B/427/452/506 of IPC (Sections 324/302/307/325/120-B and Section 25 of Arms Act added later on) registered at Police Station Bhuna, District Fatehabad, Haryana.

The present FIR was lodged on the statement of Garib Dass on the allegations that in the family of complainant, one Ramdas father of Manoj was expired and all were sitting at his home after the death of Ramdas and in the meanwhile, one, Kanshi Ram came on the *kirana* shop of complainant for getting the *bundal* of *biddi* then Shivam grandson of the complainant was sitting in the street due to death which has occurred in their family. Therefore, *biddi* cannot be sold, then due to that talk, Kanshi slapped on the face of Shivam and after some time, called 30-40 persons on spot who attacked through bricks and stones on their houses. Knife blow was given on the stomach

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of Mukesh son of the complainant, brick blow was given in the head of Ravi, serious injuries were caused on the finger and thumb of Ramesh and entire belongings in the house were broken. It is further alleged that they had also snatched the gold chain from the neck of Mukesh.

Learned counsel for the petitioner *inter alia* contends that the perusal of the FIR would indicate that the complainant-Garib Dass has named six persons in the FIR which was registered on 12.12.2022 and after 22 days, the petitioner was arrested and he was implicated in the present case only on the basis of disclosure statement suffered by co-accused while in custody which is hit by Section 26 of the Evidence Act. He further contends that the similarly situated co-accused, namely, Suresh, who was also implicated on the basis of disclosure statement of the co-accused, has been granted anticipatory bail by this Court vide order dated 17.05.2023 passed in CRM-M-22135-2023 titled as 'Suresh Vs. State of Haryana.' The injury attracting the offence under Section 302 IPC is specifically attributed to Sandeep @ Bachi. The cause of death given in the death summary is a respiratory failure and it would be a moot point to be determined by the trial Court whether offence under Section 302 IPC is made out or not.

Per contra the learned State counsel, on instructions from SI Mahender Singh, opposes the grant of regular bail to the petitioner on the ground that he was a member of unlawful assembly and has actively participated in the alleged incident. Mukesh, son of the complainant was murdered, two persons were seriously injured, he has also snatched the gold chain from the neck of the deceased and petitioner is involved in a case under the Arms Act. As such, he does not deserve the concession of regular bail.

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 perusing the records of the case, it transpires that the petitioner is behind the bars since 04.01.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 10.03.2023. Trial of the case has not made much progress as none out of 36 prosecution witnesses have been examined so far.

Keeping in view the facts and circumstances of the case and especially, the fact that the similarly situated co-accused-Suresh has been granted anticipatory bail by this Court vide order dated 17.05.2023 passed in

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CRM-M-22135-2023 titled as 'Suresh Vs. State of Haryana' and the likelihood of trial being prolonged, the present petition is allowed. Culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Ram Niwas is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa 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

29.11.2023

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