

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

137

CRM-M-58494 of 2022 (O&M)
Date of Decision: 16.01.2023

Sudesh Kumar @ Suresh Kumar and another

..... Petitioners

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Piyush Sharma, Advocate
for the petitioners.

Mr. Amish Sharma, AAG, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners, through instant petition under Section 439 Cr.P.C., are seeking regular bail in FIR No. 169 dated 5.7.2022 under Sections 326-A, 427, 148, 149 of the Indian Penal Code, 1860, registered at Police Station Guruharsahai, District Ferozepur.

2. Learned counsel for the petitioner *inter alia*, contends that petitioner No. 1 (father-in-law) of complainant and petitioner No. 2 is brother-in-law (Jeth) of complainant. Both the petitioners are in custody since 25.9.2022 and matter between the parties have been amicably settled. Both the parties have filed compromise petitions before this Court. The complainant and her family members filed CRM-M- 58628 of 2022 seeking quashing of GD No. 22 dated 6.7.2022 under Section 323, 452 and 34 IPC and petitioners have filed CRM-M- 55157 of 2022 seeking quashing of FIR No. 169 dated 5.7.2022 under Sections 326-A, 427, 148, 149 IPC registered

at Police Station, Guruharsahai District Ferozepur. The petitioners have been wrongly implicated in the commission of alleged offence. The petitioners are not involved in any other FIR. The petitioners are permanent resident of Ferozepur and staying with family members. The petitioner has deep roots in the society. There is no possibility of flee from justice.

3. Learned State Counsel submits that petitioners are involved in the commission of grave offence, thus, no leniency is warranted and release of petitioners would hamper the trial.

4. 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.”

5. 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;

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

6. 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 and 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.

7. Keeping in mind:

1. The petitioners are in custody since 25.9.2022;
2. The petitioners have compromised the matter with the complainant and petition seeking quashing of FIR is pending before this Court;
3. Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act, Companies Act are not applicable in the case in hand;
4. The petitioners are not involved in any other criminal case;
5. The petitioners are permanent resident of Ferozepur and having family members;

this Court is of the considered opinion that present petition deserves to allowed and accordingly allowed. The petitioners are ordered to be released on bail subject to conditions as may be imposed by trial Court/Illaqa/Duty Magistrate concerned.

(JAGMOHAN BANSAL)
JUDGE

16.1.2023
paramjit

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