

CRM-M-58188-2023
Date of decision: 23.11.2023

Versus

State of Haryana ...Respondent

Present: Mr. Arjun Singh, Advocate
for the petitioner.

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.379 dated 30.08.2020 under Sections 195-A/506/34 of IPC registered at Police Station Khol District Rewari.

Brief facts of the case are that one Anoop son of Abhay Singh from the village of complainant had fight with Varun (pardhan) and the complainant was a witness in that FIR No.56 of 2019 due to which, they attacked the complainant, resultantly, FIR No.189 of 2019 was registered against Varun. On 28.08.2020, at about 03:30 P.M. the complainant, namely, Shyamlal, received a phone call from Jitender @ Tony along with Naveen @ Bacchi said that '*Shyam why you're flying high and why are you messing with pardhan (Varun)*' and started threatening him and *gandhi* to kill and hurled abuses. They were threatening the complainant to take back the FIR No.189, in which Varun (pradhan) is now on bail, whereas, Jitender @ Tony had no enmity with the

CRM-M-58188-2023

-2-

complainant and thus, the present FIR was got registered.

Learned counsel for the petitioner *inter alia* contends that initially the FIR was lodged against the co-accused-Jitender @ Tony and Naveen @ Bacchi. The petitioner has not named in the FIR and there is no specific allegation against him. The petitioner was implicated in the present case only on the basis of disclosure statement suffered by Jitender @ Tony while in custody and, thereafter, the petitioner was granted the concession of regular bail by the learned Additional Sessions Judge, Rewari on 15.07.2021. The petitioner could not attend the trial Court proceedings due to miscommunication with his counsel and he was declared proclaimed offender on 01.09.2023 by the learned trial Court. The petitioner was arrested and is behind the bars since 07.10.2023.

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that he is a habitual offender and he is involved in three more cases which are pending trial and he has been acquitted in two cases. He further submits that the petitioner is not having clean antecedents and there is every likelihood if he is released on bail, he would not appear before the learned trial Court and it will hamper the progress of the 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

CRM-M-58188-2023

-3-

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 after perusing the records of the case, it transpires that the petitioner is behind the bars since 07.10.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 17.11.2020 and supplementary challan was presented before the concerned Court on 20.09.2021. The case is now fixed on 08.12.2023 for framing of charges and trial of the case has not made much progress as none of the prosecution witnesses out of 13 has been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner.

Keeping in view the law laid down by the Hon’ble Supreme Court of India in ‘**Prabhakar Tewari Vs. State of U.P. and another**’ 2020 (1) R.C.R. (Criminal 831) and ‘**Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another**’, 2012 (2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

CRM-M-58188-2023

-4-

In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Kuldeep @ KD is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Il-laqa Magistrate/Trial Court.

In addition, the petitioner or any one on his behalf shall prepare a Fixed Deposit in the sum of Rs.1,00,000/- (Rupees One Lakh Only) and deposit the same with the trial Court. The same would be liable to be forfeited in case the petitioner absents from attending the trial without sufficient cause.

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

23.11.2023
Neha

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