

CRM-M-58528-2023
Date of decision: 24.11.2023

Feroj Ansari @ Feroj Alam ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mohan Singh Rana, Advocate
for the petitioner.

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.189 dated 05.08.2023 under Sections 328 and 381 read with Section 34 of IPC registered at Police Station DLF Phase-1, District Gurugram (Anneuxre P-1).

Brief facts of the case are that on 05.08.2023, the complainant went to Bella Monde Resort with his entire family to celebrate the birthday of his child and his guard and servant, namely, Shiva Nandan and Kamal Singh, respectively, were at home. When the complainant with his family returned home, he found that the gate of his house was opened and the guard was missing. On searching, he was found unconscious on the terrace of the 4th Floor and when he searched for servant-Kamal Singh, he was not there in the house. On searching the rooms, the complainant found the locks of the lockers of his wife and mother, broken and came to know that his servant-Kamal Singh along with his associates committed theft in his house and thus, the present FIR was got registered.

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Learned counsel for the petitioner *inter alia* contends that petitioner is neither named in the FIR nor there is any evidence to connect the petitioner with the alleged offence. Nothing has been recovered from the possession of the petitioner during investigation and he is behind the bars since 22.09.2023. He further submits that the petitioner is not involved in any other case.

Per contra, the learned State counsel, on instructions from ASI Devinder Singh, has opposed the grant of regular bail to the petitioner on the ground that Investigating Agency has collected sufficient evidence to prove the complicity of the petitioner with the alleged occurrence and further submits that petitioner is not a resident of State of Haryana and if released on regular bail, it would be difficult to secure his presence 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

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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 22.09.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 08.10.2023. The case is now fixed on 01.12.2023 for framing of charges. The trial of the case would take long time to conclude.

Keeping in view the facts and circumstances of the case, the fact that the petitioner is not involved in any other case 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-Firoj Alam 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.

In addition, the petitioner or any one on his behalf shall prepare a Fixed Deposit in the sum of Rs.50,000/- (Rupees Fifty Thousand 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

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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

24.11.2023
Neha

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