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215 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-59839-2023 (O&M)
Date of Decision: 04.12.2023

IMDAD AHMAD

...Petitioner

V/S

STATE OF U.T. CHANDIGARH

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashish Grewal, Advocate
for the petitioner.

Mr. Manish Bansal, P.P. UT Chandigarh.

HARPREET SINGH BRAR J. (Oral)

1. This is the first petition under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 140 dated 30.08.2023 registered under Sections 379-A and 34 of the Indian Penal Code at Police Station Sector-31, District Chandigarh.

2. Learned counsel for the petitioner inter alia contends that the co-accused namely Amandeep was granted regular bail vide order dated 20.11.2023 (Annexure P-2) by this Court passed in CRM-M-57476-2023. The case of the petitioner is at par with the aforementioned co-accused and he has not been named in the FIR. The driving license of the complainant was recovered from the possession of the aforementioned co-accused, whereas the mobile of the complainant is alleged to have been recovered from the possession of the present petitioner. The petitioner is in custody since 30.08.2023.

3. Per contra, learned State counsel has opposed the prayer for grant of bail to the petitioner on the ground that petitioner is a habitual offender and involved in one more case of similar nature. Although he admitted the fact that the trial of the case has not started as none out of 13 prosecution witnesses has been examined so far.

4. Having heard the learned counsel for the parties and after perusing the record, it transpires that the petitioner is behind the bars since 31.08.2023 and the trial of the case has not made any progress as none of the prosecution witnesses have been examined so far. Culpability, if any, would be determined 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 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. Further, in view of the law laid down by Hon'ble Supreme Court in **Prabhakar Tiwari Vs. State of UP and Anr. 2020(1) RCR (Criminal) 831**, petitioner- Imdad Ahmad is ordered to released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty

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Magistrate.

6. 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.
7. The petition is allowed.

(HARPREET SINGH BRAR)
JUDGE

04.12.2023
Ajay Goswami

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