

CRM-M-60337-2023 (O&M) 1

213 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-60337-2023 (O&M)

Date of Decision: 06.12.2023

KESHAV SHARMA @ GULLU

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.K. Choudhary, Advocate
for the petitioner.

Mr. I.P.S. Sabharwal, DAG Punjab.

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. 48 dated 24.04.2023 registered under Sections 324, 323, 34 of Indian Penal Code (Section 326 IPC added later on) at Police Station Sujampur, District Pathankot.

2. FIR was lodged on the basis of statement made by complainant Suraj Kumar on the allegations that on 22.04.2023 after having dinner, he had gone to see *Jagrata* at Edgah Mohulla, near Liquor Shop. At Around 11.30 PM, he felt hungry and purchased a packet of Kurkure and biscuit from the confectionery shop. After purchasing two packets of chips, he was going back to see *Jagrata* and on the way Yuvraj Mehra @ Yuvi and Keshav Sharma (petitioner) who was empty handed, came out on the street and present petitioner pushed the complainant and exhorted that the complainant should be taught a lesson. Yuvraj Mehra who was armed with a *datar*, attacked the complainant. The complainant has put forward his hand in order to save himself and the *datar* blow hit the complainant on the back side of his

left hand. Another blow was given by Yuvraj Mehra on the wrist of the left hand.

3. Learned counsel for the petitioner inter alia contends that the petitioner has not been attributed any injury and he was alleged to have been empty handed and only exhortion is attributed to him. The FIR was registered after a delay of 02 days and the petitioner is not involved in any other case.

4. Per contra, learned State counsel opposes the prayer for grant of bail to the petitioner and submitted that it was on his exhortion, the entire incident has taken place. The main accused Yuvraj Mehra, at his instance has attacked the complainant who suffered three injuries, out of which two are grievous in nature. However, learned State counsel admitted the fact that the injuries on the person of the complainant are on the non-vital part.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that the petitioner is behind the bars since 09.09.2023. Investigation of the case is complete and Investigating Agency has submitted the final report under Section 173 Cr.P.C. on 06.11.2023 and the trial of the case has not made any progress as none out of the 14 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.”

6. In view of the above, petitioner- Keshav Sharma @ Gullu 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 Magistrate.

7. 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.

8. The petition is allowed.

(HARPREET SINGH BRAR)
JUDGE

06.12.2023
Ajay Goswami

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