

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-63415-2023 (O&M)

Date of Decision: 21.12.2023

GURVINDER BHATIA @ GURVINDER SINGH @ GORKHI
...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Bhupinder Ghai, Advocate
for the petitioner.

Mr. Madhur Sharma, AAG 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. 64 dated 03.06.2012 registered under Sections 364, 452, 148 and 149 of Indian Penal Code at Police Station City Phagwara, District Kapurthala Punjab.

2. Learned counsel for the petitioner contends that the present petitioner was not named in the FIR and earlier he was granted the benefit of pre-arrest bail by learned Additional Sessions Judge, Kapurthala vide order dated 16.02.2019 and he had co-operated with the Investigating Agency and his interim bail was made absolute vide order dated 08.03.2019 (Annexure P-2). During the pendency of the trial, the co-accused namely Surjan Singh, who was specifically named in the FIR, was declared innocent and cancellation report was prepared on the basis of compromise between the accused and the complainant, but the same was not approved by the SP(D), Kapurthala and the final report under

Section 173 of Cr.P.C. was presented before the concerned jurisdictional Magistrate after a period of 07 years. The petitioner continued to appear before the learned trial Court. During the pandemic situation of Covid-19, trial of the case was being adjourned on regular intervals and the petitioner got arrested in some other FIR. As he could not appear before the learned Sub Division Judicial Magistrate, Phagwara, the bail of the petitioner was cancelled vide order dated 02.07.2022 and petitioner was summoned through warrants of arrest. Ultimately, the petitioner was declared as proclaimed offender by completely bye-passing the procedure under Section 82 of Cr.P.C. Moreover, the co-accused Surjan Singh and Parminder Singh have already filed petitions for quashing of FIR(supra) on the basis of compromise, which is now listed for 24.01.2024. The Investigating Agency has placed the accused Surjan Singh in column No. 2 of the final report and the petitioner is behind the bars since 21.07.2023 and has been facing incarceration without the trial making any progress.

3. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that he is a habitual offender, has been involved in three more FIRs and does not deserve the concession of bail and filed the custody certificate, which is taken on record.

4. Having heard learned counsel for the parties and perusing the records of the case, it transpires that the petitioner was granted anticipatory bail and for non-appearance before the trial Court, sufficient cause has been shown. The parties have already approached this Court seeking quashing of the FIR on the basis of compromise.

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. In view of the ratio of law laid down by Hon'ble Supreme Court in **Prabhakar Tiwari Vs. State of UP and Anr.** 2020(1) RCR (Criminal) 831 and **Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others** 2012(2) SCC 382, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

6. Without commenting further on the merits of the case, lest it may prejudice the outcome of the trial, the present petition is allowed and the petitioner- Gurvinder Bhatia @ Gurvinder Singh @ Gorkhi 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.

21.12.2023
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

AJAY GOSWAMI
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I attest to the accuracy and
integrity of this document